

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
Mirant Corporation's ) 00-AFC-4  
POTRERO POWER PLANT UNIT 7 )  
PROJECT )  
 )

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Stanley W. Valkosky, Hearing Officer

E.V. (Al) Garcia, Advisor

Rick Buckingham, Advisor

STAFF PRESENT

Dr. James W. Reede, Jr., MPPA, Project Manager

William W. Westerfield, III, Staff Counsel

Michael Fajans, Urban Planning and Development  
Gabriel Roche, Inc.

Amanda Stennick

PUBLIC ADVISER

Roberta E. Mendonca, Esq.

REPRESENTING THE APPLICANT

Michael J. Carroll, Attorney  
Latham and Watkins

Mara Feeney, Principal  
Mara Feeney and Associates

Mark Harrer, Project Director  
Mirant Americas Development, Inc.

INTERVENORS

Jacqueline Minor, Deputy City Attorney  
City and County of San Francisco

Alan Ramo, Director  
Our Children's Earth  
Southeast Alliance for Environmental Justice  
Environmental Law and Justice Clinic of  
Golden Gate University School of Law

William Rostov, Staff Attorney  
Communities for a Better Environment

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## P R O C E E D I N G S

10:07 a.m.

PRESIDING MEMBER PERNELL: Good morning.

This is the fourth set of evidentiary hearings of the proposed Potrero Unit 7 project. My name is Commissioner Pernell, and I'm the Presiding Member. My Associate Member is Commissioner Keese, and Commissioner Keese is unable to be here today.

To my left, is my advisor, Mr. Garcia, Al Garcia. To my far right is Commissioner Keese's advisor, Rick Buckingham, Mr. Buckingham. We have our Hearing Officer, whom all of you know, Mr. Valkosky.

Today's hearing is limited to certain aspects included within the broad topic of socioeconomic resources and especially does not include demographic data or environmental justice concerns.

At this time, I would like the parties to introduce themselves and their team starting with the applicant, please.

MR. CARROLL: Good morning. I'm Mike Carroll with Latham & Watkins, Counsel to the applicant. Here with me today is Mara Feeney with

1 Mara Feeney and Associates. She is our expert  
2 witness on socioeconomics, and also here is Mar  
3 Harrer, who is the Project Manager for Mirant.

4 PRESIDING MEMBER PERNELL: Welcome.

5 MR. CARROLL: Thank you.

6 PRESIDING MEMBER PERNELL: Staff.

7 MR. WESTERFIELD: Good morning, it is  
8 Bill Westerfield, representing the Energy  
9 Commission Staff. With me this morning is Michael  
10 Fajans and Amanda Stennick, who will be part of  
11 our panel giving testimony, also is James Reede --

12 DR. REEDE: Dr. James Reede.

13 MR. WESTERFIELD: Dr. James Reede, new  
14 Dr. James Reede, the Project Manager.

15 PRESIDING MEMBER PERNELL: Okay.  
16 Welcome. Are there any public officials or their  
17 representatives in the audience today that would  
18 want to introduce themselves? Seeing none, may we  
19 have our intervenors, please?

20 MR. ROSTOV: William Rostov, Staff  
21 Attorney for Communities for a Better Environment.

22 PRESIDING MEMBER PERNELL: Welcome.

23 MR. RAMO: Alan Ramo for Our Children's  
24 Earth and Southeast Alliance for Environmental  
25 Justice.

1               PRESIDING MEMBER PERNELL: Welcome. Any  
2 other intervenors?

3               MS. MINOR: Jackie Minor from the City  
4 and County of San Francisco.

5               PRESIDING MEMBER PERNELL: Oh Jackie,  
6 how can I overlook you.

7               MS. MINOR: New hairstyle, what can I  
8 say.

9               PRESIDING MEMBER PERNELL: Okay. Are  
10 there any others?

11              (No response.)

12              PRESIDING MEMBER PERNELL: All right,  
13 thank you. We have our Public Adviser, Ms.  
14 Mendonca, would you come down and say a few words.  
15 I think everybody is pretty familiar with the  
16 great job that you do, but we want you to  
17 introduce yourself for the record.

18              MS. MENDONCA: All right, thank you very  
19 much. I am Roberta Mendonca, the Energy  
20 Commission's Public Adviser.

21              My only comment is that this project for  
22 the last several months has been relatively quiet  
23 from the public participation perspective. Thank  
24 you.

25              PRESIDING MEMBER PERNELL: Thank you and

1 welcome.

2 At this time, I will turn I'll turn the  
3 hearing over to our Hearing Officer, Mr. Valkosky.

4 HEARING OFFICER VALKOSKY: Thank you,  
5 Commissioner Pernell. The purpose of today's  
6 hearing is to establish factual record necessary  
7 to reach a decision in this case. We do this  
8 through the taking of written and oral testimony  
9 and exhibits by parties.

10 We will follow a format similar to that  
11 of the previous hearings in December. The only  
12 filed testimony that we have before us today is  
13 part of the socioeconomic resources portion of the  
14 February 2002 Final Staff Assessment and  
15 applicants prepared testimony on the relevant  
16 portions of the Socioeconomic Discipline filed on  
17 April 11, 2003.

18 At the conclusion of the evidentiary  
19 presentations, we'll discuss various procedural  
20 items including, but not necessarily limited to,  
21 the scheduling of future events, the status of  
22 potential project changes, the affect of the Unit  
23 3 retrofit, and any other relevant items that the  
24 parties would care to discuss.

25 With that, are there any questions?



1 (No response.)

2 HEARING OFFICER VALKOSKY: Okay, we'll  
3 begin with the applicant's witness. Mr. Carroll.

4 MR. CARROLL: Thank you. Applicant  
5 calls Mara Feeney to testify in the area of  
6 socioeconomics, and I ask that the witness be  
7 sworn.

8 PRESIDING MEMBER PERNELL: Does the  
9 witness need to be sworn? Would you stand please  
10 and raise your right hand.  
11 Whereupon,

12 MARA FEENEY  
13 was called as a witness herein, and after first  
14 having been duly sworn, was examined and testified  
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. CARROLL:

18 Q Would you please state your name, title,  
19 and employer?

20 A My name is Mara Feeney, I'm a Principal  
21 with Mara Feeney and Associates.

22 Q If you would briefly summarize your  
23 qualifications for us?

24 A I have an Undergraduate Degree in  
25 Cultural Anthropology, a Masters Degree in

1 Community and Regional Planning, and I have over  
2 twenty-five years of experience doing land use and  
3 socioeconomic impact analysis.

4 Q Are you the same Mara Feeney that  
5 submitted prepared testimony in this proceeding  
6 which is now been labeled as Exhibit 77?

7 A Yes.

8 Q If I were to ask you the questions  
9 contained in those materials under oath, would  
10 your answers be the same?

11 A Yes.

12 Q Am I correct that there are also a  
13 number of exhibits identified in your prepared  
14 testimony that you are sponsoring today?

15 A Yes.

16 Q Just to be clear, Section 8.8 of the AFC  
17 pertaining to socioeconomics that you are  
18 sponsoring as amended by the Station A Amendment  
19 pertaining to cultural resources, is that correct?

20 A Yes.

21 Q Would you please provide an overview of  
22 the analysis that you undertook regarding the  
23 Potrero Unit 7 Project?

24 A Yes. The analysis addresses a range of  
25 socioeconomic issues including labor force

1 employment, income population, housing, fiscal  
2 issues, schools, and local public services and  
3 utilities.

4 The report presents current information  
5 and projections for these resources and looks at  
6 the proposed project to evaluate how these things  
7 might be affected by the project and whether there  
8 would be substantial changes.

9 The criteria that we used to determine  
10 whether or not any particular change in the  
11 socioeconomic resources would be significant or  
12 not significant is based on the guidance provided  
13 by the California Environmental Quality Act and  
14 Appendix G.

15 Essentially what this guidance says is  
16 that impacts will be considered significant if the  
17 project would induce substantial population  
18 growth, if it would induce substantial increases  
19 and demand for public services and utilities, if  
20 it would displace a large number of people, if it  
21 would disrupt or divide an established community,  
22 and if it would result in long term disruption to  
23 business.

24 After evaluating the project related  
25 impacts, my conclusions were that none of these

1 project related changes would meet these criteria,  
2 and therefore, there are no significant impacts.

3 Q Do you have updates or corrections to  
4 make to Section 8.8 of the Application for  
5 Certification?

6 A As I understand it, the estimated cost  
7 of the project has gone up substantially. At the  
8 time we did this analysis, it was estimated at  
9 around \$300 M, now the estimate is in excess of  
10 \$400 M. This would have some impact on the  
11 employment, income, and property tax revenue  
12 projections that were included in the originally  
13 analysis. These would be greater than before.

14 Since these would be beneficial impacts,  
15 they are also not considered significant adverse  
16 environmental impacts.

17 Q Thank you. Did the changes that have  
18 occurred in the Bay Area economy over the period  
19 of time since the Application for Certification  
20 was initially prepared, materially affect your  
21 analysis or your conclusions?

22 A No, there have been substantial changes.  
23 As we all know, there are a lot more people  
24 looking for work today. There have been short  
25 term changes, but they do not affect the

1 conclusion of my analysis.

2 Q Thank you. Does that complete your  
3 testimony?

4 A Yes.

5 MR. CARROLL: Mara Feeney is now  
6 tendered for cross-examination in the area of  
7 socioeconomics.

8 PRESIDING MEMBER PERNELL: You had  
9 indicated that the cost of the project has went  
10 up. Is that related to the topic of  
11 socioeconomics?

12 MS. FEENEY: It's related in several  
13 ways. It can affect the number of jobs that were  
14 created by the project.

15 PRESIDING MEMBER PERNELL: I mean,  
16 but -- let me rephrase. Is it because of  
17 socioeconomics that the cost of the project went  
18 up?

19 MS. FEENEY: No.

20 PRESIDING MEMBER PERNELL: Okay.

21 HEARING OFFICER VALKOSKY: I just have  
22 one clarifying question about the affect cost  
23 going up would result in an increase in property  
24 tax and things like that.

25 MS. FEENEY: Typically it would, yes.

1 HEARING OFFICER VALKOSKY: Thank you.  
2 Mr. Westerfield.

3 MR. WESTERFIELD: Thank you, Mr.  
4 Valkosky. The staff has no questions for Ms.  
5 Feeney.

6 HEARING OFFICER VALKOSKY: Ms. Minor.

7 MS. MINOR: No questions at this time.

8 HEARING OFFICER VALKOSKY: Mr. Ramo.

9 MR. RAMO: I have a few questions.

10 CROSS EXAMINATION

11 BY MR. RAMO:

12 Q In your response to -- CPE did a request  
13 112, you indicate that the company has signed an  
14 agreement with the unions, is that correct?

15 A That was my understanding at the time,  
16 yes.

17 Q Is that still your understanding?

18 A Actually, I don't know.

19 Q How does the union agreements square  
20 with what is called the First Source Program in  
21 San Francisco?

22 A I'm afraid I am not privy to the details  
23 of the union agreement myself. I can't answer  
24 that question.

25 Q You indicate that the union agreement

1 should assure the maximum amount of qualified  
2 craft workers from the local neighborhoods. Is  
3 that still your opinion?

4 A Yes.

5 Q Do you know if there are any members of  
6 the unions who are from the local neighborhoods?

7 A I do not know where the union members  
8 live.

9 Q Do you know if the contract or union  
10 practice gives first hiring preference to locals?

11 A I don't know that.

12 Q Now, going back to the AFC, which I  
13 understand is a few years ago too, at page 8.8-15,  
14 you reference an impact one, which concerns the  
15 underground cable and potential blockage of  
16 businesses. Do you recall that impact?

17 A Yes, I think it was regarding temporary  
18 access to the businesses and the fact that there  
19 was a fair amount of traffic coming in and out of  
20 those businesses.

21 Q I'm sorry, I didn't catch that.

22 A That there was a fair amount of traffic  
23 coming in and out of those businesses, so it could  
24 be a substantial concern short term.

25 Q That's right. It could be, potentially,

1 a substantial impact, is that correct?

2 A Yes, but a temporary one.

3 Q It was also your testimony that there  
4 would be mitigation measures that would render  
5 them insignificant. Is that a fair statement of  
6 your testimony?

7 A Yes.

8 Q Would those mitigation measures  
9 eliminate any blockage of those properties?

10 A I don't think it is possible to  
11 eliminate any blockage, but it would minimize  
12 those by providing advance notification to  
13 business owners and working with the businesses to  
14 make sure their hours of operation, their peak  
15 hours, don't coincide with any work going on at --

16 Q Some of those businesses are trucking  
17 firms, is that right?

18 A Correct.

19 Q Do you think the blockage of access for  
20 a trucking firm for one day is insignificant?

21 A I would have to say, according to SEQA  
22 guidance on significance, yes it is.

23 Q Do you know how many days trucking firms  
24 access will be blocked by this project?

25 A No, I don't.



1           Q     At what point, does blocking access for  
2     a trucking firm, in your mind, become significant?  
3     How many days would it take before you would  
4     consider it significant?

5           A     I'm sorry, but I think the question is  
6     irrelevant since my opinion about it isn't what I  
7     used as a basis of my socioeconomic analysis.

8           Q     You have no opinion about whether a  
9     given number of days of blockage of access to a  
10    site would be significant?

11          A     Right, I don't have a quantitative  
12    number in my mind at what point it is significant,  
13    and I do believe there are ways -- there are  
14    standard traffic mitigation measures that reduce  
15    impacts almost entirely through rerouting, keeping  
16    one lane open at all times, and things like that.

17          Q     Are you aware if anyone with authority,  
18    such as the company or the city, has agreed to do  
19    those mitigation measures?

20          A     I don't know that. I do notice that  
21    they were recommended by the CEC staff in the  
22    final staff assessment.

23          Q     Are you pointing to a specific condition  
24    of compliance that requires these mitigation  
25    measures?

1           A     I believe I saw it written up as a  
2     recommendation, not a requirement.

3           Q     At this point, as far as you know, the  
4     company hasn't agreed to those mitigation  
5     measures?

6           A     I don't know the answer to that.

7           Q     You don't know if the city has agreed to  
8     those mitigation measures, do you?

9           A     I don't know the answer to that either.  
10    I do know that these mitigation measures are  
11    absolutely standard for most construction projects  
12    in San Francisco and elsewhere.

13          Q     You don't know if the Commission's staff  
14    has required that in their conditions and  
15    compliance, do you?

16          A     Correct.

17          Q     Further, you indicate that approximately  
18    ten employees will be permanently hired as a  
19    result of the project. Is that correct?

20          A     Yes.

21          Q     Do you know how those ten new workers  
22    will be chosen?

23          A     No, I don't.

24          Q     Do you know if Mirant has a policy that  
25    when there are vacancies, they give first choice

1 to current employees?

2 A I don't know Mirant's hiring policies.

3 Q You don't know whether anyone from San  
4 Francisco, other than Mirant employees, would be  
5 hired for those ten employees? Is that correct?

6 A Correct, I don't know. I know that  
7 those operation jobs are highly specialized, and I  
8 don't know how likely it is that the local labor  
9 pool would provide the persons for operation.

10 Q At page 8.8-16 in the AFC, I take it  
11 that you concluded that nearby property values  
12 would not be affected by the project. Is that  
13 correct?

14 A Correct.

15 Q Is it correct that you made that opinion  
16 for two reasons, one, the use of the site will not  
17 change. Second, there's a buffer area around the  
18 site. Is that correct?

19 A Correct.

20 Q On what basis did you conclude that  
21 doubling the size of generation at this site would  
22 not affect nearby property value?

23 A I based that conclusion on the fact that  
24 it is not a change in use at the site, it is an  
25 intensification of the use that is already there,

1 and on the fact that there is a buffer zone of  
2 other industrial uses in that area east of  
3 Illinois.

4 Q Once a site is used for a particular  
5 purpose, the amount of activity there, the size of  
6 buildings, none of that in your view would affect  
7 nearby property values?

8 A No, I think there is at some point at  
9 which those could affect property values, but  
10 given the generally unutilized land in the east of  
11 Illinois area, I don't think that this particular  
12 project could be called a substantial impact of  
13 that sort.

14 Q It is fair to say that you saw it as a  
15 combination of the nature of the activity of this  
16 site with the buffer area?

17 A Yes.

18 Q Now, in response to the city's Data  
19 Request 145, you made some analysis of whether  
20 there was residential uses near the site. Is that  
21 correct?

22 A Yes.

23 Q That analysis was current as of the year  
24 2000, is that correct?

25 A Correct.

1           Q     At the time you made that analysis, you  
2     did note that there were a number of applications  
3     for residential loft work facilities in the area,  
4     is that correct?

5           A     Yes.

6           Q     At the time, either they weren't  
7     approved or they haven't been built, is that a  
8     fair statement?

9           A     Correct.

10          Q     In the three years between that response  
11     and today, do you know if any of those sites have  
12     been permitted?

13          A     Yes. I know a number of sites have been  
14     permitted, and there has been construction of, I  
15     don't know the exact number, but hundreds of  
16     housing units in the neighborhood.

17          Q     Does the fact that there are now  
18     hundreds of housing units in the area affect your  
19     views about the nature of the buffer area?

20          A     No, it doesn't. While there have been  
21     construction of hundreds more units, it is  
22     actually -- the construction pace in that  
23     neighborhood has slowed down considerably.

24                     Many of the work lots that were being  
25     constructed actually occurred before analysis was

1 done. Yes, more have been added to the area, but  
2 that was a trend that was clearly visible at the  
3 time of the analysis.

4 Q How close is the closest residential  
5 live/work loft unit that is either planned, under  
6 construction, or now occupied to the site?

7 A Actually, I can't answer that question  
8 for what is planned today because my date is a  
9 little older than that, but at the time of this  
10 analysis, it was approximately 500 feet. I don't  
11 know of any housing that has been constructed  
12 closer than that to the power plant site.

13 Q Did you contact any realtors in the area  
14 to determine whether doubling the size of the  
15 power plant would affect residential housing  
16 values in the neighborhood?

17 A Actually, I did discuss the power plant  
18 with a realtor specializing in loft sales in that  
19 area.

20 Q What was his opinion or her opinion?

21 A That the project was not nearly as  
22 relevant as things like the construction of the  
23 Third Street Lightrail and the general housing  
24 demand versus supply situation in San Francisco.  
25 He did not think this project would have a

1 negative affect on property values.

2 Q Does the controversy of a project that  
3 is within 500 feet of a residential unit affect  
4 its property value, affect the residential unit's  
5 property value?

6 A In my opinion, controversy does not  
7 necessarily affect property values, if that was  
8 the question.

9 Q Does perception about nearby uses affect  
10 property values?

11 A Property values are all about  
12 perception.

13 Q Controversy doesn't affect perception in  
14 your opinion?

15 MR. CARROLL: I'm not clear on the  
16 question. Controversy regarding? I'd ask that  
17 you rephrase the question, it is not clear in my  
18 mind what you're asking.

19 BY MR. RAMO:

20 Q Is it your opinion that building a  
21 controversial project within 500 feet of a  
22 residential unit will not affect the perception of  
23 the attractiveness of that piece of property?

24 A I'm sorry, I think we'd have to think of  
25 examples here because a controversial project

1       could either raise or lower property values  
2       depending on what type of controversial project  
3       you are talking about.

4           Q     Okay.  What about building a  
5       controversial fossil fuel power plant within 500  
6       feet of a residential area?  Is it your view that  
7       won't affect the attractiveness of that property  
8       and its value?

9           A     If you were talking about putting up a  
10      brand new power plant site in Pacific Heights,  
11      yes, I believe that would not be -- I mean,  
12      property values in San Francisco are affected by  
13      so many factors that you can't just point a finger  
14      at one thing and say, oh, that's the cause of it  
15      going up and down.  The fact is, that in this  
16      area, there already is a power plant there.  It is  
17      not a proposal, a new activity in the area.

18          Q     Your view is, once people in the  
19      neighborhood are used to a power plant, doubling  
20      the size isn't going to affect its attractiveness  
21      of the residential units.  Is that correct?

22          A     In this particular situation, no.  I  
23      mean, yes, that's correct.

24               MR. RAMO:  Okay.  Thank you for your  
25      time.



1 HEARING OFFICER VALKOSKY: Mr. Rostov.

2 MR. ROSTOV: I just have one or two  
3 questions.

4 BY MR. ROSTOV:

5 Q Earlier in your testimony, you testified  
6 that the project cost is going to be up to \$400 M,  
7 and then you testified this could increase  
8 property values. Is that correct?

9 A Not property -- property values for the  
10 site itself.

11 MR. ROSTOV: Not for property values.  
12 That's all.

13 HEARING OFFICER VALKOSKY: Ms. Feeney,  
14 are you familiar with a three staff proposed  
15 conditions and certification which appear on page  
16 5.9-17 of Exhibit 3?

17 MS. FEENEY: The question was about the  
18 proposed conditions and certification?

19 HEARING OFFICER VALKOSKY: Yeah.

20 MS. FEENEY: Yes.

21 HEARING OFFICER VALKOSKY: You are  
22 familiar with those. Okay. In your opinion, are  
23 these conditions sufficient to reduce to  
24 acceptable -- to reduce to levels below  
25 significance any socioeconomic impacts?

1 MS. FEENEY: Yes.

2 HEARING OFFICER VALKOSKY: Does  
3 Applicant have any disagreement with these  
4 conditions?

5 MS. FEENEY: No.

6 HEARING OFFICER VALKOSKY: Mr. Carroll,  
7 redirect?

8 MR. CARROLL: No redirect.

9 HEARING OFFICER VALKOSKY: Anything  
10 else?

11 MR. GARCIA: Could you tell the  
12 Committee what proactive steps the Applicant is  
13 making to insure participation by local residents  
14 in the employment base? That is one thing that is  
15 not very clear to me from your testimony or the  
16 Staff's AFC. Is that question kind of clear?

17 MS. FEENEY: No, the question is clear,  
18 I'm afraid I should have the applicant address  
19 that, though. I know of this union agreement, I  
20 know there are many many union residents in San  
21 Francisco, but I'm sorry, I just don't know the  
22 details of the company's proactive hiring  
23 policies.

24 MR. GARCIA: Is there somebody from the  
25 Applicant's team that could answer that, Mr.

1 Carroll?

2 MR. CARROLL: Yes, Mr. Harrer is here,  
3 and he can answer that question.

4 HEARING OFFICER VALKOSKY: Could you --  
5 before you testify, Mr. Harrer, I'm going to place  
6 you under oath.

7 Whereupon,

8 MARK HARRER  
9 was called as a witness herein, and after first  
10 having been duly sworn, was examined and testified  
11 as follows:

12 DIRECT EXAMINATION

13 MR. HARRER: As you know, this has been  
14 a rather lengthy process. Early in the process we  
15 made contact with several community groups, self-  
16 help groups within the Bayview Hunters Point area  
17 seeking to determine if they could provide us with  
18 services on the project once it was under  
19 construction.

20 We have held talks with them. We have  
21 not signed an agreement with anyone. However, we  
22 are prepared to do that. We have talked to the  
23 union's that would participate in this.

24 By the way, I would like to clarify one  
25 thing. We do not have a PLA, a Project Labor

1 Agreement with the San Francisco Unions at this  
2 time. We did have one, we did sign one in Contra  
3 Costa County when Contra Costa 8 started  
4 construction.

5 We would probably move in that same  
6 direction on this plant, although I can't say with  
7 certainty. We have touched base with those unions  
8 to see whether participation by community members  
9 would be acceptable to them, and they have  
10 indicated that they would not oppose that.

11 BY MR. GARCIA:

12 Q Let me ask a follow up question to that.  
13 In executing a typical PLA agreement, would one of  
14 the elements of that agreement include funding  
15 things like apprenticeship programs or  
16 something -- what I am looking for is some  
17 proactive measure to insure that the local  
18 residents in the area, given that they might not  
19 have the skill base needed to gain employment  
20 there, that they can actually gain that skill base  
21 and then be considered for employment? That's  
22 kind of a long question.

23 A That, in fact, was the substance of our  
24 conversations, determining what types of programs  
25 they would be able to fit into within the union

1 structure. The labor unions within San Francisco  
2 already have programs that meet those  
3 requirements, and we would just be looking to  
4 expand those.

5 Q I guess the real nitty gritty part of my  
6 question is, how can you make sure that those  
7 programs are, in fact, aimed and delivered to the  
8 residents of the local area?

9 A We were looking -- as I said, it's a  
10 question of where we are in the project, we are  
11 still in the permitting phase. If the project is  
12 permitted, we would move to negotiate with one of  
13 the community groups or one or more of the  
14 community groups to provide that type of  
15 employment during the construction of the project.  
16 That is not an issue for merit.

17 Q I notice you qualify that by saying  
18 during the construction. What about the on-going  
19 operations?

20 A The on-going operation of the plant, as  
21 you know, our plants are top to bottom IBEW,  
22 International Brotherhood of Electrical Workers.  
23 We have in the past, as you know, and PGE before  
24 us has taken on, has hired, from the community,  
25 but primarily because the jobs are highly skilled,

1 we generally depend on employees from the union  
2 hall.

3 That doesn't mean that those jobs would  
4 be closed to anyone. You can apply for them, but  
5 it is a union hiring procedure.

6 MR. GARCIA: All right. Thank you.

7 HEARING OFFICER VALKOSKY: Mr. Harrer,  
8 could you take a look at staff condition, staff's  
9 proposed condition Socio 1. Now please confirm  
10 with me your understanding of that because as I  
11 read it, it seems to be a preference for carrying  
12 employees materials and supplies within the city  
13 and county of San Francisco first. I would refer  
14 to that as a local hiring preference. Do you have  
15 any different interpretation of that?

16 MR. HARRER: No. I can only refer to my  
17 experiences with the plant in Contra Costa. Most  
18 of the capital equipment obviously came from  
19 elsewhere. The subcontractors on the job  
20 certainly procured most of their equipment  
21 locally. That would only make sense, and they  
22 hired most of their employees locally. We would  
23 expect that to continue.

24 HEARING OFFICER VALKOSKY: Okay. What I  
25 am saying is this condition mandates you to --

1 MR. HARRER: I don't think we would have  
2 a problem with it.

3 HEARING OFFICER VALKOSKY: -- to follow  
4 that --

5 MR. HARRER: Yeah, I don't think -- we  
6 are not proposing to bring in someone to construct  
7 the plant from say out of state or out of the  
8 area. We would use local -- we would use an EPC  
9 contractor who would be hiring from the local  
10 trades.

11 HEARING OFFICER VALKOSKY: Okay. Local  
12 hiring is, in fact, applicants understanding of  
13 that condition.

14 MR. HARRER: Yes, very much so.

15 HEARING OFFICER VALKOSKY: Okay. Thank  
16 you. Do any of the other parties have any  
17 questions for Mr. Harrer? You've got yourself on  
18 the hot seat, you've got to stay there for a  
19 little bit. Mr. Westerfield.

20 MR. WESTERFIELD: We have no questions.

21 HEARING OFFICER VALKOSKY: Ms. Minor.

22 MS. MINOR: No questions for Mr. Harrer.

23 HEARING OFFICER VALKOSKY: Mr. Ramo.

24 MR. RAMO: One question. Under the  
25 current labor agreement that you have with IBEW,

1 if there is a vacancy at Potrero, do you have to  
2 first offer it to current employees?

3 MR. HARRER: I can't answer that. I am  
4 just not familiar enough with the contract, but I  
5 could get you an answer fairly easily.

6 MR. RAMO: Okay, that's it.

7 HEARING OFFICER VALKOSKY: Mr. Rostov.

8 MR. ROSTOV: No questions.

9 HEARING OFFICER VALKOSKY: Anything else  
10 for either of applicant's witnesses? I'm sorry,  
11 Mr. Carroll, did you have any redirect at all?

12 MR. CARROLL: No, I did not.

13 HEARING OFFICER VALKOSKY: Anything  
14 else?

15 (No response.)

16 HEARING OFFICER VALKOSKY: The Committee  
17 thanks and excuses the witnesses. Thank you.

18 MR. HARRER: Thank you.

19 HEARING OFFICER VALKOSKY: Any exhibits,  
20 Mr. Carroll?

21 MR. CARROLL: Yes, at this time, I would  
22 move the admission to the record of the following  
23 exhibits sponsored by Mara Feeney: Exhibit 77,  
24 which is her prepared testimony, those portions of  
25 Exhibit 1 which is the AFC that are identified in



1 her prepared testimony, the relative portions of  
2 Exhibit 15, which is the Station A Amendment to  
3 the extent that it affects those portions of the  
4 AFC that she is sponsoring, the identified  
5 portions of Exhibit 29, which are the CEC Data  
6 Requests 140 - 161, and then those portions of  
7 Exhibit 10 identified in her prepared testimony  
8 which are the CEC Data Requests 1 -113.

9 HEARING OFFICER VALKOSKY: Are there any  
10 objections to admission of those identified  
11 exhibits by any of the parties?

12 MR. RAMO: No objection.

13 MS. MINOR: No objection.

14 HEARING OFFICER VALKOSKY: No  
15 objections. Designated portions and exhibits are  
16 admitted. Mr. Westerfield, your witnesses.

17 MR. WESTERFIELD: Yes, we would like to  
18 call up Mr. Fajans and Ms. Stennick to testify.  
19 Is it a problem to move these mikes around?

20 COURT REPORTER: Yes.

21 MR. WESTERFIELD: Then maybe I should  
22 sit over here.

23 HEARING OFFICER VALKOSKY: Please raise  
24 your right hand.

25 Whereupon,

1 AMANDA STENNICK AND MICHAEL FAJANS

2 were called as witnesses herein, and after first  
3 having been duly sworn, were examined and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WESTERFIELD:

7 Q Mr. Fajans, could you please state for  
8 the record by whom you are employed and your basic  
9 qualifications as they relate to socioeconomics?

10 A Yes. I'm a senior consultant with  
11 Gabriel Roche, Inc., we're a part of the  
12 subcontract environmental group has with the  
13 Energy Commission to assist staff.

14 I have a Masters Degree in City and  
15 Regional Planning from the University of  
16 California and approximately thirty years  
17 experience, including perhaps twenty years doing  
18 socioeconomic and land use assessments.

19 Q Ms. Stennick, could you also state your  
20 position and what your relevant qualifications are  
21 to this topic area?

22 A Yes, I am employed by the California  
23 Energy Commission. I have approximately seventeen  
24 years of preparing land use and socioeconomic  
25 components of environmental impact reports. I

1 have a degree in Urban Economic Geography from UC  
2 Davis and a Masters Degree in progress.

3 Q Ms. Stennick, did you assist in the  
4 preparation of Staff's final testimony on  
5 socioeconomic resources?

6 A Yes.

7 Q Thank you. Mr. Fajans, did you prepare  
8 the testimony in Staff's final assessment on  
9 socioeconomic resources?

10 A Amanda and I did it together, yes.

11 Q Is this still your testimony today?

12 A Yes, it is.

13 Q Would you please summarize your  
14 testimony?

15 A Yes, as socioeconomic assessment, we  
16 looked at the current environment in terms of  
17 population, employment, housing, neighborhoods,  
18 and business, schools, utilities, emergency, and  
19 other services, and public finance.

20 The analysis then reviewed the likely  
21 impact of the proposed project on these factors.  
22 As you know, San Francisco is the core city of a  
23 very large Bay Area region that had almost 7  
24 million residents and 3.7 million jobs in the year  
25 2000. Compared to other -- compared to the

1 region, San Francisco, as a city, is more  
2 ethnically diverse, older, and has fewer children  
3 on average per household.

4 Since the analysis was done, of course,  
5 there has been a down turn in the economy, and  
6 there has been a loss of approximately six to  
7 seven percent of the jobs in San Francisco.

8 There are approximately two and a half  
9 million housing units in the nine county region in  
10 2000, almost two-thirds of San Francisco  
11 households are renters, which is quite different  
12 from the rest of the region.

13 While the vicinity of the proposed  
14 project is mostly industrial in character, there  
15 has been a substantial growth of live/work lofts  
16 in recent years, changing the character of the  
17 central water front area and contrasting with the  
18 dog patch residential community that is west of  
19 Third Street around Twenty-second and Tennessee  
20 Streets.

21 Census Tract 226, which encompasses the  
22 area, saw an increase in number of households from  
23 214 in 1990 to 456 in the year 2000. The trend  
24 appears to be continuing with several large new  
25 live/work developments along Third Street and

1 Illinois, both around Eighteenth Street, I would  
2 say approximately 1,000 feet or more from the  
3 project area.

4 The closest schools to the site are  
5 approximately three quarters of a mile as is the  
6 closest fire station.

7 In terms of public finance, San  
8 Francisco is both a city and county, and with the  
9 exception of the school district, community  
10 college district, and small contributions to BART  
11 and the Bay Area Air Quality Maintenance District,  
12 all property tax revenue goes to the city and  
13 county.

14 In reviewing the potential impacts of  
15 the proposed plan, you will have insignificant  
16 impacts on most of these factors. Located in a  
17 large and economically diverse region, it is my  
18 opinion that the temporary and permanent jobs  
19 associated with the project will not have  
20 significant impacts on population, employment, or  
21 housing demand.

22 As a result, there will not be a  
23 significant impact on demand for schools or  
24 emergency services.

25 Construction of the proposed project

1       should have a small and probably insignificant  
2       benefit to local businesses. Since the proposed  
3       underground transmission line along Illinois  
4       Street does not appear to be part of the project  
5       at this time, there will not be potential adverse  
6       impacts on businesses and institutions that would  
7       have been affected by construction. As a result,  
8       we are no longer suggesting the proposed condition  
9       of certification Section 3.

10               The proposed project would have a  
11       significant positive impact on public finance,  
12       generating substantial incremental money annual to  
13       the San Francisco general fund, the school  
14       district, and other agencies.

15               In terms of cumulative impacts, the  
16       expansion of San Francisco Airport discussed in  
17       the FSA is complete. The development of Mission  
18       Bay for jobs and housing has started as has the  
19       development of the Third Street Lightrail Line,  
20       which is under construction at this time.

21               Thank you.

22               Q     Thank you, Mr. Fajans. Do you have any  
23       updates or corrections to the testimony?

24               A     No, I don't.

25               Q     Ms. Stennick, do you have any updates or

1 corrections to your staff recommendations?

2 A Yes, I do. One item that relates to  
3 property tax. In June of 2002, Governor Davis  
4 signed Assembly Bill 81, which shifts the  
5 assessment for property tax from the county to the  
6 State Board of Equalization.

7 This would require an annual  
8 reassessment at fair market value as opposed to  
9 the Prop 13 restrictions. The result of that  
10 would be that Assembly Bill 81 would substantially  
11 increase the total property tax revenue from this  
12 site. However, the percentage is going to local  
13 government and any districts would be at the same  
14 rate.

15 Q Is that it --

16 A Yes, that's it.

17 Q -- with your update?

18 A Yes.

19 MR. WESTERFIELD: That's all the  
20 questions I have, and so we intend to have other  
21 witnesses.

22 HEARING OFFICER VALKOSKY: Mr. Fajans,  
23 before we begin with cross examination, could you  
24 explain to me once again the basis for your  
25 conclusion that the Illinois Street disruption

1 will no longer be caused by the project.

2 MR. FAJANS: It is my understanding that  
3 element has been deleted as part of this project  
4 and may be done separately or not done at all.  
5 I've been told that it is unlikely to be part of  
6 the project.

7 HEARING OFFICER VALKOSKY: Okay. There  
8 has been no need for Socio 3 in your opinion?

9 MR. FAJANS: Yes.

10 HEARING OFFICER VALKOSKY: Okay.  
11 Concerning Socio 1, is it your understanding that  
12 the imposition of that condition is essentially  
13 the imposition of a local hiring preference first  
14 and then a local purchasing preference?

15 MR. FAJANS: Yes, that is correct.

16 HEARING OFFICER VALKOSKY: Okay. Thank  
17 you.

18 PRESIDING MEMBER PERNELL: Just a follow  
19 up question concerning, I guess, the Social 3 and  
20 Illinois Street. Is -- was that a City/Applicant  
21 project?

22 MR. FAJANS: I'm not sure.

23 PRESIDING MEMBER PERNELL: Let me ask  
24 you this, to your knowledge, that particular phase  
25 is on hold or may not be completed. Can you share



1       where you got that information from?

2               MR. FAJANS:  Yes, I was given that  
3       information by Energy Commission Staff.

4               PRESIDING MEMBER PERNELL:  Okay.  Maybe  
5       I should turn to Mr. Westerfield with this  
6       question.

7               MR. WESTERFIELD:  Yes, Commissioner  
8       Pernell, I know it has been some time since we  
9       have dealt with the local system of faxing  
10      transmission system engineering, but it is my  
11      recollection of the testimony of our prior witness  
12      on that subject that the first point -- excuse me,  
13      that Mirant decided to reconfigure its connection  
14      to the interstate grid by changing its switchyard  
15      configuration.

16              Now, it will, I think, connect the  
17      output of the plant directly to Potrero  
18      switchyard, which may be on site or immediately  
19      adjacent to the site.  That being the case, the  
20      first point of interconnection to the interstate  
21      grid would be at the Potrero switchyard at the  
22      substation and would no longer be at the Hunters  
23      Point Power Plant.

24              As a result, that line of connection  
25      between Potrero and Hunters Point would be down

1 stream of the first point of interconnection, and,  
2 therefore, it would be beyond the jurisdiction of  
3 the Energy Commission.

4 That being the case, it should no longer  
5 be a part of the project.

6 PRESIDING MEMBER PERNELL: Okay. That  
7 is -- this might be a little bit out of order, but  
8 Mr. Carroll, is that correct?

9 MR. CARROLL: Factually, that is  
10 correct. I'm not sure that as a legal matter we  
11 agree that the cable now falls outside the  
12 jurisdiction of the Energy Commission.

13 Let me just back up and talk about it as  
14 a practical matter. It now appears as though the  
15 cable will be constructed by PG & E and is  
16 something that PG & E will be required to do by  
17 the CPUC.

18 However, our approach to the cable to  
19 date has been to not formally withdraw from the  
20 project description because the process of PG & E  
21 constructing the cable and doing the environmental  
22 review on the cable has all been in process and is  
23 still in process.

24 Our approach, to be conservative, has  
25 been to not formally withdraw the cable from the

1 project and to go ahead and analyze the  
2 environmental impact associated with the cable in  
3 the context of these proceedings until we have 100  
4 percent certainty and confirmation that the cable  
5 was being constructed by PG & E and that PG & E  
6 was doing all the environmental review.

7 Our fear was that if we prematurely  
8 pulled the cable from this project and didn't look  
9 at the environmental impacts, and then if for some  
10 reason down the road six months from now, twelve  
11 months from now, things changed at PG & E, then we  
12 would have this piece of the project that had not  
13 been analyzed.

14 While we fully expect, as a practical  
15 matter, that at the end of the day, we will  
16 formally pull the cable out of the project, we  
17 have left it in and have asked this committee to  
18 continue to review the impacts associated with the  
19 cable because it is not 100 percent certain yet.

20 The EIR has not been done by PG & E for  
21 the cable, for example. What Mr. Westerfield is  
22 saying is that as a legal matter, the Energy  
23 Commission Staff has concluded that we really  
24 don't have any discretion because it is beyond the  
25 point of first interconnection, therefore, it is

1 out whether we want it to be out or not.

2 I'm not sure that we necessarily agree  
3 with that, but again, as a practical matter once  
4 everything related to the cable is buttoned up and  
5 100 percent completed, I would expect that would  
6 happen prior to certification of this project,  
7 then we would expect to formally pull the cable  
8 out of the project description.

9 PRESIDING MEMBER PERNELL: All right. I  
10 think it would be the Committee's wishes to not  
11 delete Social 3 until we get a definitive answer  
12 to what is going to happen to Illinois Street.  
13 Mr. Westerfield.

14 MR. WESTERFIELD: Certainly that is  
15 within the Committee's discretion, I don't mean to  
16 certainly step on your toes about what you want to  
17 do, but just to be clear --

18 PRESIDING MEMBER PERNELL: I'll move my  
19 feet, Mr. Westerfield.

20 (Laughter.)

21 MR. WESTERFIELD: Much faster than I'm  
22 sure I can step on them. Just to be clear, our  
23 point doesn't depend upon PG & E's construction of  
24 the cable which may or may not happen, which is  
25 the point Mr. Carroll's been making. Our point is

1 simply, based upon the prior testimony in this  
2 case in LSE and TSE, that we no longer believe it  
3 should be a part of the project.

4 If the construction occurs as Mr.  
5 Carroll said and the City and PG & E complete that  
6 construction prior to certification, that would be  
7 a second reason in our view, it should not longer  
8 be considered part of the project.

9 PRESIDING MEMBER PERNELL: Someone would  
10 have to do some analysis on that. Are you saying  
11 that if -- I'm not following you for some reason.

12 MR. WESTERFIELD: As to the second  
13 reason, it is as simple as this. If the  
14 transmission line is already built, then it no  
15 longer needs to be a part of this project, which  
16 would permit its being built.

17 PRESIDING MEMBER PERNELL: Right, right.  
18 That part I understand. I guess the issue for me  
19 is if, and I would like to have certainty before  
20 we start removing conditions.

21 MR. CARROLL: Which is precisely our  
22 point, Commissioner Pernell. I think you are  
23 right. PG & E needs to analyze the environmental  
24 impacts associated with the construction of the  
25 cable, and until we see a final certified SEQA

1 document from PG & E on the cable, our desire has  
2 been to continue to analyze the impacts here so  
3 that we don't get to the end of the process and  
4 find that for some reason some impact associated  
5 with the cable fell through the cracks.

6 PRESIDING MEMBER PERNELL: All right.  
7 I'm not advocating who does the analyzing, but I  
8 know that someone needs to do that. Whether it is  
9 the Applicant, PG & E, or Staff, or even the City,  
10 the Committee is going to want to know what the  
11 affects are not if something happens. If "A"  
12 happens, we will do "B", so I guess my point here,  
13 Mr. Valkosky, is that we want to be sure and have  
14 all of the elements in place. If it happens, we  
15 can always take it out, if it doesn't, it's there.

16 HEARING OFFICER VALKOSKY: Mr. Fajans,  
17 final question on this. Assuming that the cable  
18 is, in fact, part of the project, is it then your  
19 opinion that Socio 3 would acceptably mitigate  
20 impacts due to construction of the transmission  
21 line?

22 MR. FAJANS: Yes, it is. You know,  
23 things like this are routinely done. If you look  
24 at what is happening on Third Street today with  
25 the construction of a lightrail line, I'm sure

1       there are periods where access to specific  
2       properties are disrupted for a short term.

3               With appropriate notice, with  
4       negotiations as to the time people need access to  
5       their property, I'm sure things can be mitigated.

6               HEARING OFFICER VALKOSKY: In your  
7       experience, are the negotiations, the appropriate  
8       notice things that you mentioned, typically done  
9       in construction of one of your projects such as --

10              MR. FAJANS: Absolutely.

11              HEARING OFFICER VALKOSKY: Cross  
12       examination, Mr. Carroll?

13              MR. CARROLL: No cross examination.  
14       Thank you.

15              HEARING OFFICER VALKOSKY: Ms. Minor.

16              MS. MINOR: No cross examination.

17              HEARING OFFICER VALKOSKY: Mr. Ramo.

18                              CROSS EXAMINATION

19       BY MR. RAMO:

20              Q     I want to get the best answer from the  
21       staff, so either of you and the panel should feel  
22       free to answer, depending on who you feel best can  
23       do it. If either of you want to add something,  
24       that's fine by me. I don't know if it is fine by  
25       your counsel, but it is fine by me.

1           These questions are directed to both of  
2   you.

3           Let's turn to Socio 1, Conditions for  
4   Compliance. Is it your understanding that Socio 1  
5   meets the requirements of the City's First Source  
6   Program?

7           MS. STENNICK: I'm sorry, but I'm not  
8   familiar with the City's First Source Program. Is  
9   that in their general plan for the --

10          MR. RAMO: Isn't it correct that your  
11   testimony recommends that the company comply with  
12   the City's First Source Program? I'm going to  
13   have you turn to page 5.9-6. Under the section  
14   "Employment", at the end of the section there is a  
15   statement which says, "Staff suggests that Mirant  
16   work with the City to seek local workers -- excuse  
17   me, the first sentence before that says, "The City  
18   of San Francisco runs a First Source Employment  
19   Program and to the degree possible, Staff suggests  
20   that Mirant work with the City to seek local  
21   workers."

22          MR. FAJANS: Yes.

23          MR. RAMO: Do you know what the First  
24   Source Program is?

25          MR. FAJANS: Just in general, not the



1        specifics.

2                MR. RAMO:  You don't know today whether  
3        Socio 1 meets the First Source requirements?

4                MR. FAJANS:  As a technical issue, no.

5                MR. RAMO:  In the first bullet under  
6        Socio 1, there is actually a series of bullets  
7        that are exceptions to the requirement that the  
8        city -- excuse me that the company go to the City  
9        first.  Is that a fair statement about what Socio  
10       1 includes?

11               MR. FAJANS:  Yes.

12               MR. RAMO:  The first one is that they  
13        don't need to do so if will violate federal or in-  
14        state statutes, is that correct?

15               MR. FAJANS:  Yes.

16               MR. RAMO:  To the degree that federal  
17        statutes require the company to honor its labor  
18        agreements, it doesn't have to comply with Socio  
19        1, is that correct?

20               MR. FAJANS:  That would appear to be,  
21        yes.

22               MR. RAMO:  Do you know if Mirant has  
23        agreed with the Staff suggestion about the First  
24        Source Program?

25               MR. FAJANS:  Not other than the

1 testimony I heard this morning.

2 MR. RAMO: Let's turn to Socio 3, also  
3 on page 5.9-17, do you have that?

4 MR. FAJANS: Yes.

5 MR. RAMO: That's a notice requirement,  
6 correct?

7 MR. FAJANS: Yes.

8 MR. RAMO: It doesn't require any  
9 specific technique of mitigation, is that right?

10 MR. FAJANS: Yes, that is correct.

11 MR. RAMO: Were the Staff -- excuse me,  
12 on page 5.9-7, where you address these issues in  
13 the first paragraph, the Staff refers to  
14 construction staging and implementation of traffic  
15 detours. Is that correct?

16 MR. FAJANS: Yes.

17 MR. RAMO: Those aren't required by  
18 Socio 3, are they?

19 MR. FAJANS: That is correct.

20 MR. RAMO: You indicated that you did a  
21 property tax evaluation of what the affect of the  
22 project would be. Is that correct?

23 MR. FAJANS: Can you cite the --

24 MR. RAMO: Page 5.9-7 under "Public  
25 Finance and Fiscal" near the bottom.

1 MR. FAJANS: Yes.

2 MR. RAMO: There's a statement that  
3 there will be approximately 3 million annually in  
4 property taxes generated for the San Francisco  
5 General Fund. That is your testimony, is that  
6 correct?

7 MR. FAJANS: Yes.

8 MR. RAMO: That was based on the  
9 increase value of the Potrero Site is that  
10 correct?

11 MR. FAJANS: Yes, that is correct.

12 MR. RAMO: Did you conduct a second  
13 evaluation of residential property values?

14 MR. FAJANS: Not in this case.

15 MR. RAMO: Okay, thank you.

16 HEARING OFFICER VALKOSKY: Mr. Rostov.

17 MR. ROSTOV: No questions.

18 HEARING OFFICER VALKOSKY: Any redirect,  
19 Mr. Westerfield?

20 MR. WESTERFIELD: No redirect, thank  
21 you.

22 MR. GARCIA: I've got a couple of  
23 questions.

24 REDIRECT EXAMINATION

25 MR. GARCIA: I think that we heard

1 earlier from the Applicant that for a number of  
2 reasons, the projected cost of the project is  
3 going to rise from \$300 to \$400 M. We were  
4 talking a little bit about the labor agreement,  
5 and then when we got to your testimony, we were  
6 talking about what I am going to describe as  
7 "preference for purchasing stuff in San  
8 Francisco".

9 If we were to exclude the labor  
10 component of the \$400 M, how much of that \$400 M  
11 would you expect to be actually purchased in San  
12 Francisco, and as far as I know, the gas turbines  
13 aren't manufactured in San Francisco, the steel  
14 might be purchased in San Francisco, but it is  
15 just basically passed through -- I mean, how much  
16 of that money is actually going to stick in the  
17 local economy?

18 MR. FAJANS: It would be hard to answer  
19 that with any precision. Certainly the labor  
20 would be the bigger element that would stay in the  
21 local economy. You know, if one assumes that it  
22 is a third labor and two-thirds material, you  
23 know, I would guess somewhere between 10 percent  
24 and 25 percent of the material might be, you know,  
25 truly purchased within the City. Certainly the

1 larger components, electrical components, are not.

2 MR. GARCIA: Basically, outside of the  
3 concrete foundational-type products that are  
4 available locally, do you have a feel for what  
5 else might be purchased locally?

6 MR. FAJANS: Just some small  
7 miscellaneous hardware and things of that sort,  
8 you know, glass, some piping.

9 MR. GARCIA: All right. Thank you.

10 HEARING OFFICER VALKOSKY: Anything else  
11 for Staff's panel of witnesses.

12 (No response.)

13 HEARING OFFICER VALKOSKY: Hearing  
14 nothing, the Committee thanks you and excuses the  
15 witnesses. Is there any public comment on the  
16 topic of socioeconomics that has been discussed  
17 today?

18 (No response.)

19 HEARING OFFICER VALKOSKY: There's no  
20 public comment. Do you have any exhibits, Mr.  
21 Westerfield?

22 MR. WESTERFIELD: Yes, we do, Mr.  
23 Valkosky. I know we would like to move those  
24 portions of the socioeconomic testimony into the  
25 record, but I'm not sure which of the exhibit

1 numbers that corresponds to.

2 HEARING OFFICER VALKOSKY: Try 3.

3 MR. WESTERFIELD: I thought it would be  
4 three. Yes, I think 3 is the one.

5 HEARING OFFICER VALKOSKY: You are  
6 moving that portion of Exhibit 3?

7 MR. WESTERFIELD: Yes.

8 HEARING OFFICER VALKOSKY: Is there an  
9 objection?

10 (No response.)

11 HEARING OFFICER VALKOSKY: Hearing none,  
12 that portion of Exhibit 3 is admitted. We will  
13 close the record on socioeconomic. Can we go off  
14 the record for a second.

15 (Off the record.)

16 HEARING OFFICER VALKOSKY: Back on the  
17 record. With that, we will now turn to the  
18 procedural portion of today's proceeding.

19 The Committee had indicated that it had  
20 certain questions in mind about the Applicant's  
21 May 23 third status report. It also indicated  
22 that changes were proposed for the project.

23 What I submit we do at this time is let  
24 the Applicant and the other parties, to the extent  
25 they have anything to add, to update us, the

1 action of the local district on the Unit 3  
2 Retrofit and then the affect on the balance of  
3 Unit 7, then address the proposed changes  
4 regarding the cooling system alternative, and then  
5 explain to us your view as to the impact this will  
6 have on scheduling of any future events, and  
7 anything else you would like to share with the  
8 parties. Mr. Carroll.

9 MR. CARROLL: Yes. The caveat that the  
10 team that is here today, both the in-house Mirant  
11 team and the outside counsel, being myself, are  
12 not the same parties involved with the Unit 3  
13 project.

14 We are not intimately familiar, in fact,  
15 I suspect that as some of the other parties at the  
16 table probably know more about the status of Unit  
17 3 than either I or Mr. Harrer do.

18 With that caveat, what I can say is that  
19 we, Mirant, is proceeding with the Bay Area AQMD  
20 to seek an alternative compliance plan to allow it  
21 additional time to retrofit Unit 3 to meet the NOX  
22 requirements.

23 That alternative compliance plan  
24 involves the use of IERC's and the company is in  
25 the process of working with the Bay Area Air

1       Quality Management District and a number of the  
2       parties that are at the table here, including the  
3       City and County of San Francisco, and Mr. Ramo, I  
4       believe, in putting that alternative compliance  
5       plan, including the IERC banking package,  
6       together. That is very general, but that is all I  
7       really know about the status of that. As far as  
8       its implications for Unit 7, we don't believe  
9       there are any. We view that as completely  
10      independent process that is being undertaken.

11               I know that some of the parties have  
12      expressed concerns about resource constraints  
13      placed on them because of the need for them to be  
14      involved with Unit 3 activity and the Unit 7  
15      activity, and we have tried to be sympathetic to  
16      those, but as a practical matter, we don't really  
17      see that the Unit 3 activity has any material  
18      bearing on the Unit 7 proceedings.

19               HEARING OFFICER VALKOSKY: Okay. The  
20      reason I raise the question, one thing, I had the  
21      understanding that -- there was -- I don't know if  
22      it was in the form of a proposal, but certainly  
23      the thought to link Unit 3 and Unit 7 in terms of  
24      retrofitting Unit 3, you are saying that linkage  
25      does not exist, and that Unit 7 can proceed



1 independently.

2 MR. CARROLL: There is a linkage between  
3 Unit 3 and Unit 7 in the sense that the proposed  
4 "once-through" cooling system, that is part of the  
5 project in front of this Committee, would serve  
6 both Unit 3 and Unit 7. There is that connection  
7 between the two.

8 There isn't, in my view, any connection  
9 between the air quality retrofits that are taking  
10 place on Unit 3 and the Unit 7 proceedings.

11 HEARING OFFICER VALKOSKY: Okay. Thank  
12 you. Anyone have anything to add to clarify?

13 PRESIDING MEMBER PERNELL: Yes, Mr.  
14 Carroll, you mentioned that you are somewhat  
15 familiar with the extension of the retrofits or  
16 the requested extension of the retrofits for Unit  
17 3. Do you know how long that is, the request  
18 is?

19 MR. CARROLL: I do not. My  
20 understanding is that because of the need to time  
21 the retrofits in a way that was acceptable to the  
22 ISO and all the other parties involved so that the  
23 project, Unit 3, would come down at an appropriate  
24 time, there was a need to reconcile the demands of  
25 the Bay Area Quality Management District

1 regulations in terms of the retrofit and the  
2 demands for the need for power from Unit 3 and the  
3 way that those potentially conflicting schedules  
4 have been reconciled is to put in place an  
5 alternative compliance plan that would allow the  
6 retrofit to take place after the date that it  
7 would otherwise have to occur under the air  
8 quality regulations. I don't know exactly what  
9 the timing is on the Unit 3 retrofit.

10 HEARING OFFICER VALKOSKY: Staff, do you  
11 have anything to add?

12 MR. WESTERFIELD: No, we don't have  
13 anything to add.

14 HEARING OFFICER VALKOSKY: Ms. Minor.

15 MS. MINOR: No, I think at the high  
16 level statement of issues that Mr. Carroll has  
17 given, adequately represents our understanding of  
18 where things are.

19 HEARING OFFICER VALKOSKY: Okay, Mr.  
20 Ramo.

21 MR. RAMO: I agree mostly with what Mr.  
22 Carroll had to say. There is an inevitable  
23 linkage in relationship when evaluating the impact  
24 of doubling the size of a generating unit and  
25 what's happening with the original unit.

1           What is happening with the original unit  
2   is input, and it may err in this case to the  
3   extent that this Committee entertains the concept  
4   of cumulative impacts. At the same time, the  
5   company has made some significant efforts to  
6   consult with intervenors, and in this case,  
7   because they also represent significant community  
8   interests, they are affected by this cumulative  
9   impact. I think there has been a significant  
10  effort on the side of intervenors and other  
11  community groups to respond to that.

12           That situation is very much fluid and  
13  input, in the sense that Mirant has applied for  
14  credits, the District has preliminarily okayed it.  
15  We will submit comments that indicate that most of  
16  the credits are illegal, but we are trying to see  
17  if there is a way to resolve our differences and  
18  concerns.

19           How that gets worked through may in ways  
20  that are not really within the view of this  
21  Commission, may involve and require players here  
22  to look at the guard picture of energy development  
23  as subsequently seen in San Francisco. That is  
24  why we felt from the beginning that it was  
25  important to focus resources on that because that,

1       frankly, is more important than the licensing or  
2       retrofitting, or the signing of any one particular  
3       unit that we should seem to be to us worth taking  
4       a few months to see if we can do it. That is what  
5       I understand to be the situation.

6               HEARING OFFICER VALKOSKY: All right.

7       Thank you, sir. Mr. Rostov.

8               MR. ROSTOV: I have a question for Mr.  
9       Carroll. It could just be my faulty memory, but I  
10      thought the Unit 3 retrofit was originally part of  
11      the AFC's. Is that --

12              MR. CARROLL: There may have been  
13      discussion in the AFC about the existing unit and  
14      the need to retrofit. I don't know that there  
15      was, but I can't say there was not. In terms of  
16      review of that permitting of that activity, that  
17      was never part of the application.

18              MR. ROSTOV: Not in the relation SCR,  
19      was the SCR going to be a joint?

20              MR. CARROLL: No.

21              MR. ROSTOV: Okay, that's all.

22              HEARING OFFICER VALKOSKY: Thank you.  
23      Mr. Carroll. Well, I guess it is all tied in  
24      together on your third status report, the changes  
25      that may be forthcoming in the project.

1           MR. CARROLL: Yes, we did submit a  
2       status report on May 23 as I believe everybody  
3       here is aware. We had spent a great deal of time  
4       over probably the last twelve to eighteen months  
5       looking at alternatives to the once-through  
6       cooling system.

7           Specifically over the past six months we  
8       have focused intently on a hybrid cooling tower, a  
9       cooling tower with plume abatement technology that  
10      would utilize wastewater from the city's  
11      wastewater treatment plant.

12          We have had discussions with the San  
13      Francisco Public Utilities Commission about the  
14      feasibility of that cooling system alternative and  
15      how waster water could be delivered to the site  
16      from the city's treatment plant.

17          Mirant hired an outside design  
18      engineering firm to look at the proposal in more  
19      detail. That firm has prepared a final report  
20      that Mirant has received and has shared with the  
21      City and County of San Francisco.

22          It is our conclusion, based on that  
23      report, that proposed system is technically  
24      feasible. It could be done. Wastewater could be  
25      delivered from the wastewater treatment plant, it

1       could be treated in a nutrietary treatment plant  
2       probably located at the power plant site and then  
3       used in a cooling tower with plume abatement  
4       technology.

5               From a technical perspective, we believe  
6       that it can be done. We do not have an agreement  
7       at this point with the City and County of San  
8       Francisco to deliver wastewater from the treatment  
9       plant. Obviously, setting aside whether it could  
10      be done technically, it would not be feasible to  
11      implement that proposal without a guaranteed  
12      supply of wastewater from the City.

13             The other issue is the cost is  
14      significantly higher for the hybrid tower than it  
15      is for the proposed wastewater cooling system, in  
16      the neighborhood of about \$50 M.

17             There are two significant caveats, one  
18      being having to -- or contingencies, I guess. One  
19      being having to have an agreement with the City  
20      for the delivery of wastewater and the other being  
21      a financial arrangement being finalized in terms  
22      of a power contract or some other mechanism that  
23      would allow the project to absorb the additional  
24      \$50 M and still remain viable from an economic  
25      standpoint. Those two issues are still

1 outstanding. However, not withstanding those, we  
2 think because it is technically feasible and we  
3 think because it is theoretically possible to  
4 reach agreement with the City to supply the  
5 wastewater and it is theoretically possible that  
6 the project would have a contract that would allow  
7 to absorb the additional costs associated with  
8 that, that it makes sense to move forward with  
9 that as an alternative to once-through cooling.

10 Our proposal would be to submit an  
11 amendment to the application for certification  
12 that would request the Committee to certify the  
13 project with both the proposed once-through  
14 cooling system and the proposed alternative, the  
15 hybrid tower using wastewater.

16 HEARING OFFICER VALKOSKY: You would  
17 envision submitting the amendment at what time?

18 MR. CARROLL: In approximately forty-  
19 five days from now.

20 HEARING OFFICER VALKOSKY: We are  
21 looking at mid July.

22 MR. CARROLL: Correct.

23 HEARING OFFICER VALKOSKY: What is the  
24 status of your negotiations with the City  
25 concerning the wastewater supply?

1           MR. CARROLL: We have not had a detailed  
2 discussion about what the potential terms and  
3 agreement would be. We have gotten to the point  
4 where we received the design engineering report  
5 and we all concluded, okay now, it can be done,  
6 but we have not sat down and sort of talked turkey  
7 on what the terms of an agreement might be or  
8 whether the City would even be willing to enter  
9 into an agreement to supply wastewater.

10           I would say --

11           HEARING OFFICER VALKOSKY: When do you  
12 intend to start talking turkey?

13           MR. CARROLL: Now. Soon.

14           HEARING OFFICER VALKOSKY: Soon is okay,  
15 I'll just interpret that as imminent. Okay.

16           MR. CARROLL: Yes.

17           HEARING OFFICER VALKOSKY: At what point  
18 would you believe you would have to have the  
19 wastewater available? I mean, before  
20 construction, before certification? There are a  
21 lot of different points that you could choose.

22           MR. CARROLL: I would say not -- if the  
23 project is certified as we are proposing with both  
24 alternatives there, then I would say we would not  
25 need to have the agreement prior to certification,



1 but we would certainly need to have it prior to  
2 commencement of construction because once we start  
3 construction -- well, I would say prior to  
4 detailed design work because we need to know once  
5 we start the detailed design work, which of the  
6 two alternatives we are going for.

7 HEARING OFFICER VALKOSKY: That would be  
8 post certification?

9 MR. CARROLL: Right.

10 HEARING OFFICER VALKOSKY: Now, if you  
11 are going to also proceed with the once-through,  
12 that means you still have to get the biological  
13 opinion from the federal authorities, right?

14 MR. CARROLL: Yes, yes, and a draft  
15 biological opinion has been issued by the federal  
16 agencies, we are awaiting the final biological  
17 opinion to be issued. We expect that to occur  
18 within a matter of weeks.

19 HEARING OFFICER VALKOSKY: Okay, so that  
20 could occur in about say a month. Is that fair?

21 MR. CARROLL: Yes, technically, yes it  
22 should happen within a month.

23 HEARING OFFICER VALKOSKY: Okay.  
24 Proceeding with both options -- then again, I am  
25 just to assume for the present discussion that the

1 biological opinion doesn't find any violations of  
2 federal law or anything, you are still going to  
3 have to deal with the BCDC negative water on the  
4 once-through option. Is that correct?

5 MR. CARROLL: That is correct. The  
6 draft biological opinion does find that the  
7 project does not likely jeopardize the continued  
8 existence of any listed species and does provide  
9 incidental take authorization for a limited take  
10 of listed species.

11 HEARING OFFICER VALKOSKY: Has that  
12 joint biological opinion been circulated to the  
13 parties?

14 MR. CARROLL: It has not. It has only  
15 provided -- it is still an interagency document,  
16 so it was provided by National Marine Fisheries  
17 Service to the Environmental Protection Agency and  
18 the agencies are still consulting with each other  
19 under Section 7, so it is not a public document at  
20 this point.

21 HEARING OFFICER VALKOSKY: Okay, so it  
22 not being a public document at this point means  
23 that there is not public comment on it at this  
24 point?

25 MR. CARROLL: Right. That's right. We

1 do know -- we asked the National Marine Fisheries  
2 Service, did you conclude that the project is it a  
3 jeopardy decision. In other words, if they  
4 concluded that the project would jeopardize a  
5 continued existence of the species, that is  
6 basically a no go, and we were told no, you know,  
7 it is not a jeopardy conclusion.

8 We know that the document is not final,  
9 it is not public.

10 HEARING OFFICER VALKOSKY: Okay. Thank  
11 you. You also indicate that, I believe, that  
12 Staff could review the amendment -- that Staff and  
13 the other parties could review the amendment in  
14 approximately 45 days?

15 MR. CARROLL: You know, the other  
16 parties and Staff, I guess, will have to comment  
17 on that. We think that is reasonable, in large  
18 part because we have spent so much time analyzing  
19 cooling system alternatives already and talking  
20 about what the impacts might be. It's not as  
21 though it is something new to all of us. It is  
22 something we have been spending a lot of time on  
23 for at least the last twelve to eighteen months.

24 We wouldn't expect it to take a  
25 significant amount of time to review that. The

1 other factor is that most of the impacts, we would  
2 be eliminating a lot of issues. We would have  
3 some additional air quality impacts, but they are  
4 relatively minimal and we would be eliminating  
5 analysis and biological impacts. I think it  
6 should be a fairly straight forward amendment  
7 without a lot of additional environmental analysis  
8 required. Therefore, it shouldn't take too long  
9 for the parties to review it and respond to it.

10 HEARING OFFICER VALKOSKY: Okay, well,  
11 again, it is hard for anybody to guess not having  
12 seen the amendment, but obviously we will have to  
13 permit at least one round of discovery should any  
14 questions arise.

15 MR. CARROLL: Right. I anticipate that  
16 I hope that it would be a short time frame for  
17 discovery, but we anticipated that the parties  
18 would want some opportunity to ask questions.

19 Again, we have been -- we've shared this  
20 information with all of the parties over the last  
21 twelve months, calculated the emission increases  
22 associated with the upland alternatives, we have  
23 prepared and distributed visual representations of  
24 what the upland alternatives would be, so most of  
25 what will ultimately be in this amendment has

1 already been seen by the parties. It needs to be  
2 all pulled together and packaged, but we spent a  
3 lot of time looking at what the changes and the  
4 environmental impacts might be with this  
5 alternative already.

6 HEARING OFFICER VALKOSKY: Finally, you  
7 are suggesting, basically, at least the hearing  
8 process of the case taking a hiatus until  
9 approximately September. Is that correct?

10 MR. CARROLL: I think that makes the  
11 most sense. We had discussed in previous hearings  
12 whether or not it would be possible to move  
13 forward on other topics, specifically, air quality  
14 and public health. I think, in theory, we could  
15 still do that, but I think now that we have made a  
16 decision to amend the application for  
17 certification, probably the better route in terms  
18 of use of all our resources is to hold off on any  
19 further evidentiary hearings until that amendment  
20 has been submitted and reviewed.

21 HEARING OFFICER VALKOSKY: Do you also a  
22 agree that the first event when the hearing  
23 aspects resume would probably best be a status  
24 conference or pre-hearing conference type of  
25 event, so we could make sure all of the parties

1 are all on the same page and we can identify any  
2 of the topics we've heard which may need  
3 supplemented as a result of the amendment?

4 MR. CARROLL: I think that would be a  
5 very good idea.

6 HEARING OFFICER VALKOSKY: Thank you.

7 PRESIDING MEMBER PERNELL: Just two  
8 questions. Actually, maybe just one. I'm trying  
9 to get a handle on what was the cost of the  
10 increase in costs?

11 MR. CARROLL: It's the capital and the L  
12 & M costs for the hybrid system that are higher.

13 PRESIDING MEMBER PERNELL: It was the  
14 hybrid system or the other cooling alternative  
15 that you are looking at.

16 MR. CARROLL: That's right, that's the  
17 \$50 M differential. Previously, during the  
18 socioeconomics discussion, we talked about the  
19 fact that the estimated cost for the project has  
20 escalated. That is related to a number of things,  
21 more precise estimates that have been done since  
22 the AFC and just general cost increases that have  
23 occurred over the last four years since the AFC  
24 was prepared.

25 The \$50 M that I referred to when I was

1 discussing the hybrid system, that is related just  
2 to the change from the once-through to the  
3 alternative cooling system.

4 PRESIDING MEMBER PERNELL: All right.  
5 If -- you've requested that additional time be  
6 allowed and sometime in September. Is that enough  
7 time to negotiate with the City, meet with the  
8 community, do the necessary things, and the Staff  
9 to do their analysis because when we reconvene, we  
10 want to roll it to the end so to speak?

11 MR. CARROLL: I think it would be  
12 sufficient time for the analysis to be completed.  
13 Whether or not we would have an agreement with the  
14 City on the wastewater treatment plant, I don't  
15 know. That is why we are not pulling the once-  
16 through cooling system because until we have an  
17 agreement with the City to get water from the  
18 wastewater treatment plant, we can't put all of  
19 our eggs in that basket. I don't know how those  
20 negotiations will go or how long they will take.

21 PRESIDING MEMBER PERNELL: All right. I  
22 think what the Committee is looking for is that a  
23 commitment from Applicant to -- it seems to me  
24 that there are a number of loose ends, and this  
25 would be -- if the Committee grants the extension,

1       this would be a good time to try and pull all of  
2       those loose ends together, so when we reconvene at  
3       a status conference, we will have, you know, to  
4       the extent possible.

5               Certainly you can sit there and say  
6       that, you know, the community is even going to let  
7       you through the door, I understand that, but I  
8       guess what the Committee would want to hear is  
9       that there is a commitment to try and pull these  
10      loose ends together so that when we come back at  
11      the status conference, we won't have to keep  
12      either delaying or just going forward with the  
13      parties unprepared.

14             MR. CARROLL:  There is a commitment and  
15      there has been a commitment throughout, and this  
16      is a very difficult project with complicated  
17      substantive issues and community opposition and  
18      local government opposition, so it has been a very  
19      difficult project and will continue to be one.

20             As a result of that, I recognize it has  
21      moved slowly, and perhaps it appears sometimes  
22      that nothing is happening or that the Applicant is  
23      not pushing the project hard.  I can assure you  
24      that the commitment is there, and we have been  
25      trying to push and it hasn't always been clear



1       which direction to push in, but the commitment is  
2       there to try to build this project.

3               Mirant thinks that the City needs this  
4       project. We think that many in the state agree  
5       with us, that the City needs this project, and we  
6       think that ultimately the City will come to the  
7       realization that it needs this project.

8               Our commitment is to push it forward, to  
9       get it permitted, to get it permitted in a way  
10      that we have maximum flexibility in terms of the  
11      cooling system, and that is the idea behind having  
12      both alternatives there that at some future point,  
13      when we are able to convince the City that we need  
14      to move forward with this project, we can say to  
15      them, do you want to provide wastewater treatment  
16      from the plant for us to do the hybrid system or  
17      do you want to provide us a license so we can put  
18      the once-through cooling system in. Our effort  
19      here --

20              PRESIDING MEMBER PERNELL: Don't give me  
21      too much information here. All I want is a  
22      commitment. I am going to ask all of the parties  
23      the same thing because I think that as long as  
24      there is people at the table when negotiations is  
25      going on, that we have a chance to do some good

1 for the City, for the State of California, as well  
2 as the community and the Applicant. That's kind  
3 of the general statement from the Committee, I  
4 would think, that everybody work together.

5 My sense is that you have been doing  
6 that, but you know, right now, you know, there's a  
7 suggested timeline and the Committee will take it  
8 under advisement, but if that is agreed upon by  
9 the Committee, then we want to come back at the  
10 status conference knowing that we pulled as many  
11 of these loose ends together as possible.

12 MR. CARROLL: Understood.

13 PRESIDING MEMBER PERNELL: Thank you,  
14 Mr. Carroll.

15 HEARING OFFICER VALKOSKY: Mr.  
16 Westerfield, comments?

17 MR. WESTERFIELD: I think as an initial  
18 matter, it is difficult for Staff to know exactly  
19 how long it will take to evaluate the amendment  
20 and to receive the amendment, but on first blush,  
21 the time period estimated by Mirant of I think 45  
22 days to do a review, is something that should be  
23 doable and seems appropriate in light of the  
24 previous information that has been given to staff  
25 on the possible hybrid cooling system. James,

1 would you like to comment on that?

2 DR. REEDE: Commissioner Pernell and  
3 Hearing Officer Valkosky, I'm Dr. Reede. We  
4 discussed it entirely when once the letter had  
5 been received, and our concern was still the ones  
6 you raised concerning a discovery period.

7 For that reason, we feel the 60 days  
8 would be better because if there is going to be a  
9 discovery period under our rules and regulations,  
10 they still have 30 days to respond. It would take  
11 us at least two weeks to possibly three weeks,  
12 especially with on-coming summer vacation  
13 schedules, to evaluate the amendment and generate  
14 the data request. By law, they have 30 days to  
15 respond, then we have to file an addendum to the  
16 Final Staff Assessment, so 60 days, we feel, would  
17 be the minimum to go through adequate discovery,  
18 deliver a quality product, and be ready for the  
19 continuation of evidentiary hearings.

20 PRESIDING MEMBER PERNELL: All right --

21 DR. REEDE: That is predicated upon at  
22 least an initial agreement for there to be  
23 wastewater because if they City is not going to  
24 sell them water --

25 PRESIDING MEMBER PERNELL: Dr. Reede,

1 not too much information.

2 DR. REEDE: -- we would be wasting our  
3 time.

4 PRESIDING MEMBER PERNELL: Your  
5 recommendation is 60 days.

6 DR. REEDE: Correct.

7 PRESIDING MEMBER PERNELL: I would ask  
8 you the same question that I asked Mr. Carroll  
9 about the cooperation and trying to work together  
10 to tie up the loose ends.

11 DR. REEDE: We would do everything  
12 within our power to get it done. I'll give you  
13 that commitment that we would work as  
14 expeditiously as possible. Our primary concern,  
15 though, is whether or not they are going to be  
16 able to have wastewater because we do not want to  
17 expend state funds if we aren't going to have a  
18 viable amendment to look at.

19 HEARING OFFICER VALKOSKY: I have two  
20 observations. First of all, Commissioner, the  
21 Committee can, should it choose, shorten the  
22 discovery period for both response and request.  
23 Okay, that is one possibility.

24 PRESIDING MEMBER PERNELL: There goes  
25 your vacation.

1 HEARING OFFICER VALKOSKY: I'm not  
2 suggesting the Committee do that, I'm saying that  
3 the Committee do that. Dr. Reede, part of what  
4 you said could be interpreted as saying that Staff  
5 sees little value in doing, or not to use little  
6 value, cannot do a comprehensive review of  
7 Applicant's amendment absent a wastewater  
8 agreement or at least --

9 DR REEDE: The preliminary agreement  
10 that gives the parameters, how much water is going  
11 to be delivered, what is the quality of the water  
12 that is going to be delivered, do they necessarily  
13 have to do (indiscernible), when we found out in  
14 the other case Commissioner Pernell was presiding  
15 on that they could use secondary.

16 HEARING OFFICER VALKOSKY: Would that  
17 necessarily be incorporated into an agreement as  
18 opposed to the proposal for the amendment?

19 PRESIDING MEMBER PERNELL: Yes, because  
20 we are going to have to know those flow rates, and  
21 we are going to have to know the quality of the  
22 water because it is eventually going to go out the  
23 cooling tower. Are there going to be public  
24 health issues? We can't tell that unless we know  
25 how much water is going to be processed. If they

1 are not going to be able -- if the City and County  
2 is not going to be able to deliver an adequate  
3 amount of water, it may render the amendment  
4 unfeasible. It gets fairly complex, and I have to  
5 look at how many of my different disciplines would  
6 have to evaluate this amendment and right now we  
7 are at 17 and 23. It is more complex than  
8 reviewing a document.

9 MR. CARROLL: Let me be clear. All of  
10 that information will be provided in the AFC.  
11 When I said we don't have an agreement with the  
12 City for the delivery of the wastewater, what I am  
13 talking about is basically the legal/economic  
14 agreement between the parties.

15 We know that the City can meet the  
16 demands of the project, we know what the flow rate  
17 would be, we know what the quality of water would  
18 be, we have concluded the (indiscernible)  
19 treatment is necessary, so all of the information  
20 needed to analyze the impacts, if we got the  
21 agreement with the City, will be in the amendment.

22 HEARING OFFICER VALKOSKY: Okay, so  
23 given that, all the technical parameters will be  
24 identified, I take it your concerns are alleviated  
25 then, right?

1 DR. REEDE: Yes.

2 HEARING OFFICER VALKOSKY: Okay, thank  
3 you.

4 MR. WESTERFIELD: I might add, if I may.  
5 I understand from Mr. Carroll's statement earlier  
6 that there has been a final report, an engineering  
7 report, at least on some level, and if that is  
8 available or ready to be released, if you could  
9 get that to Staff asap, that might help us get a  
10 jump start on some of these technical issues we  
11 will need to review.

12 DR. REEDE: We will take the first piece  
13 and get started.

14 MR. CARROLL: We can do that. We can do  
15 that. Mr. Harrer was just explaining it to me  
16 that these are some of the technicalities that is  
17 how the report is structured, but we can get it to  
18 you.

19 MR. WESTERFIELD: Thank you, that would  
20 be helpful. I think as a general matter, an  
21 observation that I think Staff would like to make  
22 about the proposed planned amendment, some time  
23 ago in our final FSA, we did a review of the  
24 proposed once-through cooling and the cooling  
25 water options, and I think it was a conclusion of

1 our review that we did favor the alternative of  
2 hybrid cooling, and so we welcome this move by  
3 Mirant to add an alternative for hybrid cooling.

4 We think this is a positive step for the  
5 project, and I think potentially more  
6 environmentally friendly to the environment of San  
7 Francisco and the Bay than the original proposal.

8 Again, we are glad to see it, and in  
9 fact, we will be very happy to see it once we get  
10 it.

11 HEARING OFFICER VALKOSKY: Anything  
12 else, Mr. Westerfield?

13 MR. WESTERFIELD: No, I think that is  
14 all the Staff has at the moment.

15 DR. REEDE: I have one additional  
16 comment. In another proceeding currently before  
17 the Commission, we had suggested in our  
18 alternative cooling water option, the return of  
19 the water to the waste treatment plant for  
20 eventual discharge or for additional uses.

21 Would it be possible to include that as  
22 part of the alternative?

23 MR. CARROLL: That is the current  
24 proposal, that is the design.

25 DR. REEDE This isn't using the cooling



1 tower, what I am suggesting is you send it back to  
2 the waste treatment plant so it could be sold  
3 again as reclaimed water.

4 MR. HARRER: That's certainly possible,  
5 we do return all of the --

6 HEARING OFFICER VALKOSKY: Mr. Harrer,  
7 you've got to come up to the microphone.

8 MR. HARRER: That is the design we ended  
9 up with.

10 PRESIDING MEMBER PERNELL: State the  
11 name, please, for the record.

12 MR. HARRER: Mark Harrer, Mirant  
13 Corporation. That is the design that we did end  
14 up with, and we do return all of the blow down  
15 from the cooling tower as well any other  
16 wastewater back to the treatment plant as a return  
17 line.

18 DR. REEDE: Okay, that's fine. That is  
19 what I was asking for, and you explained it, thank  
20 you.

21 HEARING OFFICER VALKOSKY: Okay, is  
22 there any other comments on these general matters,  
23 Mr. Westerfield?

24 MR. WESTERFIELD: No more comment.

25 HEARING OFFICER VALKOSKY: Ms. Minor, I

1 take it you have the City's authorization to agree  
2 to the wastewater contract --

3 (Laughter.)

4 MS. MINOR: No, I do not. A couple of  
5 comments. In our last status meeting, we  
6 indicated that the City's mayor had directed the  
7 PUC to work with Mirant to look at hybrid cooling  
8 as an alternative, and certainly the San Francisco  
9 PUC, the technical people on the water side have  
10 worked, I think, diligently and cooperatively with  
11 Mirant to get to the point now that we know that  
12 technically using recycled water from the City's  
13 wastewater treatment plant is a technically  
14 feasible alternative for the cooling of the  
15 proposed Unit 7.

16 I personally have not seen the final  
17 engineering report, and if it has been sent to  
18 someone in the City, it has not been forwarded to  
19 me. Michael Clayron has it. I just want to  
20 suggest to you that the conversations in the City  
21 have not gotten beyond the people who are working  
22 at a very technical level and certainly not at a  
23 policy level in looking at the implications of  
24 using City wastewater, and frankly, making the  
25 policy decision about whether or not this is

1 something that the City wants to do.

2 Those conversations have not even  
3 started, and they will involve discussions and  
4 ultimately negotiations both at the legislative  
5 branch, the executive branch, and in particular at  
6 the community level. These will be intensive and  
7 extensive discussions. Our Board of Supervisors  
8 recesses during the month of August, as you  
9 probably know, and I think the timing is going to  
10 be an important consideration.

11 Let me just leap forward because we are  
12 now on a path where the Applicant has two cooling  
13 alternatives. Once-through cooling for which a  
14 license or right away from the City's port is  
15 required, and hybrid cooling where an agreement to  
16 you for the City to provide treated wastewater is  
17 required.

18 The idea that we are going to commit  
19 more resources in this hearing room without  
20 nailing down one of those because there is an  
21 agreement from the City, in my view, is just a  
22 tremendous waste of resources, both at the local  
23 level and also at the state level.

24 Whatever happens at the next status  
25 conference in this matter, it seems to me that it

1 is critically important that if this hearing is to  
2 proceed, this application is to proceed, that it  
3 should be very clear for you, Commissioner  
4 Pernell, that there is a commitment on the part of  
5 the City to enter into their agreement that's  
6 needed by Mirant for one or both of these  
7 alternatives, and without such an agreement for us  
8 to continue to devote the level of resources and  
9 time and effort that we have all been required to  
10 put into this, is really just a travesty in my  
11 view.

12 We are now two years into talking about  
13 having an agreement with the Port to provide in  
14 order for the once-through cooling system to be  
15 built. Of course, there is no such agreement, and  
16 under the City's legislative process, any such  
17 agreement with the Port would also have to be  
18 approved by the Board of Supervisors.

19 You've got two public bodies, both of  
20 which are subject to the Brown Act, and would have  
21 to have extensive public hearings. We can't do  
22 that in 45 days, we frankly can't do it in 60 days  
23 with a controversial project as this is a  
24 controversial project.

25 As you know, the City is also moving

1 ahead. We will be submitting to you an  
2 application to license the Williams Peaker, and so  
3 the same people that are working this, is working  
4 on the Williams Peaker, and our resources are very  
5 thin.

6 We don't want to put more resources into  
7 this case unless it is clear that this Applicant  
8 is going to get the agreement with the City and  
9 County, a decision made not by me, but by the  
10 policy makers in order for this plant to be  
11 licensed.

12 PRESIDING MEMBER PERNELL: Ms. Minor, I  
13 understand government, and sometimes the wheels  
14 can turn slowly. Let me ask you, though, is there  
15 other situations where they have emergency  
16 meetings to decide a -- to make a decision, a  
17 policy decision?

18 MS. MINOR: The Board of Supervisors?

19 PRESIDING MEMBER PERNELL: Those bodies  
20 that have to make a decision in this particular  
21 case, the policy. Not the analytical folks, but  
22 the policy makers.

23 MS. MINOR: In terms of the Brown Act  
24 and the Public Notice requirements, certainly this  
25 kind of matter doesn't qualify as emergency that

1 would be an exception to the Brown Act. If your  
2 question is --

3 PRESIDING MEMBER PERNELL: We are not  
4 trying to get an exception to the Brown Act.

5 MS. MINOR: If your question is whether  
6 or not our Board of Supervisors would convene in  
7 August during their vacation time to take this up,  
8 I doubt it.

9 PRESIDING MEMBER PERNELL: My question  
10 is, is there a situation where the Board of  
11 Supervisors of the City of San Francisco policy  
12 makers ever have emergency meetings to decide a  
13 policy issue?

14 MS. MINOR: Commissioner Pernell,  
15 sitting here with you today, I certainly can't  
16 think of a situation. If there were a member of  
17 the Board of Supervisors who was willing to  
18 sponsor and therefore, carry any required  
19 legislation which would be in the form of a  
20 resolution or ordinance in order to expedite the  
21 process, the Board could elect to sit as a  
22 committee of the whole, which would mean, that  
23 instead of the matter being introduced then  
24 referred to committee, with the hearing being held  
25 at the committee where sometimes it is continued

1 for further hearings, the entire Board of  
2 Supervisors would sit as a committee of the whole  
3 to hear the hearing.

4 That is certainly a way to expedite any  
5 legislative process, but it is completely  
6 dependent upon a member of the Board being willing  
7 to carry and sponsor the legislation, and the  
8 President of the Board willing to convene the  
9 Board as a committee of the whole. That option is  
10 certainly available.

11 PRESIDING MEMBER PERNELL: The reason I  
12 ask that is because we have a similar option at  
13 the Commission where a commissioner can request  
14 and the president or the chairman in this case,  
15 and we have a Board meeting. There still has to  
16 be notice and etc., but it is a possibility.

17 MS. MINOR: I will also add that, you  
18 know, the political reality is that any Board  
19 member sponsoring such a legislation and  
20 requesting a committee of the whole, is going to  
21 want to know up front that there is a real  
22 likelihood that he or she will have a majority of  
23 the Board supporting the legislation because  
24 otherwise it is a waste of everybody's time.

25 PRESIDING MEMBER PERNELL: You've got to

1 know where your votes are before you move  
2 something. Let me just ask you in terms of --  
3 well, two questions. One of them has to do with  
4 time. There's been two suggestions, would you  
5 like to suggest a length of time knowing the  
6 bureaucracy of the City and County as you do?

7 MS. MINOR: Mirant has suggested that it  
8 can have its amendment filed 45 days from today.

9 PRESIDING MEMBER PERNELL: I have a 45  
10 and a 60 day suggestion.

11 MS. MINOR: That's right, 45 days will  
12 take us roughly to September, 60 days to the  
13 middle of September, is that about right, the end  
14 of September? In order for our Board of  
15 Supervisors to meet a September deadline, we are  
16 talking about legislation being introduced now, so  
17 it can get through the process by the end of July.  
18 I don't see that is practically feasible since the  
19 business terms, with respect to the hybrid cooling  
20 option, we haven't even begun those discussions.

21 Now, on the other, the once-through  
22 cooling, that has to originate at the Port, so it  
23 has to go through the Port's process before it  
24 even goes over to the Board of Supervisors, and of  
25 course, there are no discussions going on with the



1 Port right now about once-through cooling.

2 If I am looking at the Board of  
3 Supervisors recessed in August, if there is an  
4 agreement that is ready by the end of July, it  
5 would be pending through August during the recess,  
6 introduced early September, referred to Committee  
7 with hearings two to three weeks later, coming  
8 back to the Board for hearing probably the middle  
9 of October, and that's a pretty expedited process.

10 PRESIDING MEMBER PERNELL: All right.  
11 You are somewhere -- I don't know what you've got  
12 there, 90 days?

13 MS. MINOR: Well --

14 DR. REEDE: 45.

15 HEARING OFFICER VALKOSKY: No, 90 days  
16 is about till the beginning of September.

17 DR. REEDE: You are talking two periods,  
18 though.

19 HEARING OFFICER VALKOSKY: Right.

20 MS. MINOR: It is 45 days after Mirant  
21 files is what you were talking about, and now I --

22 HEARING OFFICER VALKOSKY: 45 days after  
23 Mirant files is about September 1. You are  
24 talking another 45 days, you're talking 135 days  
25 roughly.

1 MS. MINOR: I'm actually not really  
2 counting the days because I think that the real  
3 question here, is whether or not the Applicant can  
4 negotiate with the legislative branch of the City  
5 and County of San Francisco to even have anything  
6 to submit to the Board of Supervisors. That is  
7 the first question.

8 PRESIDING MEMBER PERNELL: Okay, but the  
9 Committee's question is when to reconvene these  
10 hearings --

11 MS. MINOR: Uh-hum.

12 PRESIDING MEMBER PERNELL: -- and that's  
13 the question that I am interested in, so I --

14 MS. MINOR: The City is prepared to  
15 check in with you early September or somewhat  
16 later if that is the date that the CEC Staff  
17 chooses, we will support that.

18 Our point is that when we check in at  
19 the next status conference, if at that point we  
20 represent to you that there is no agreement with  
21 the City or County of San Francisco for either  
22 alternative, we see no basis to proceed with these  
23 hearings.

24 HEARING OFFICER VALKOSKY: That,  
25 essentially, in your opinion, gives the City a

1 veto, a total veto power over the state process  
2 then.

3 MS. MINOR: No, what is does is to say  
4 that if an applicant is determined to build a  
5 project the City doesn't support, it has to build  
6 the design, it does not require an agreement with  
7 the City. In which case, the state is in full  
8 control of siting the project.

9 PRESIDING MEMBER PERNELL: Are you  
10 saying you don't support anything that the  
11 Applicant is doing?

12 MS. MINOR: That is not my decision, I'm  
13 not a policy maker for the City. Thus far, the  
14 City has not finalized any agreement with Mirant.  
15 In fact, on the legislative branch side, there's  
16 an ordinance that specifically says that no  
17 executive department can enter in to an agreement  
18 that is not approved by the Board of Supervisors.

19 PRESIDING MEMBER PERNELL: All right.  
20 Let me ask you my final question, which is, the  
21 same question I've asked the previous speakers on  
22 the willingness to if possible tie up the loose  
23 ends, so when we come back we can have what I  
24 would call a productive status conference. That  
25 is working with the community, the Applicant, and

1 Staff to try and tie up those loose ends.

2 MS. MINOR: I think from the standpoint  
3 of the City, that is what we want, and that is  
4 what we expect. Since we were last here, as I  
5 have indicated, the City has certainly worked at a  
6 technical level in a very cooperative way with  
7 Mirant looking at the hybrid cooling alternative.

8 Many of us have met with senior  
9 officials at Mirant with respect to the Unit 3  
10 issues, and those meetings have been very  
11 cooperative where there's been an effort to both  
12 understand and work collaboratively with respect  
13 to Unit 3.

14 We want to see that continue, and so we  
15 will definitely continue the dialogue. We will,  
16 you know, await Mirant's calls with respect to  
17 beginning negotiations on the two alternatives.

18 What I cannot commit to is that the  
19 policy makers that I have no control over, some of  
20 whom are elected officials, that they will be  
21 willing, from a public policy standpoint, to enter  
22 in to any of these agreements. That I don't know  
23 and don't have control over.

24 PRESIDING MEMBER PERNELL: All right.  
25 They don't know exactly what the City is going to

1 do, and neither of you know what Staff is going to  
2 do, so I understand that part. All right. Thank  
3 you.

4 MR. CARROLL: Let me just be clear. Our  
5 proposal and the timing associated with our  
6 proposal does not contemplate that we would have  
7 in place the agreements and the legislative  
8 actions that Ms. Minor has described. I think  
9 that is highly unlikely to occur within 90 days or  
10 120 days.

11 Let me just be blunt. The political  
12 reality that we are dealing with right now is that  
13 there are, in our view, a handful of individuals  
14 within the current City administration that are  
15 opposed to this project and are, essentially,  
16 exercising a veto over the project proceeding.

17 We also believe that political realities  
18 change, administrations change, staffs change,  
19 events occur, such as the City having difficulties  
20 siting the Williams Peaker, such as suggested on  
21 the front page of the Chronicle today, and  
22 shortages this summer.

23 Many events are likely to transpire over  
24 the next six to twelve months that will change the  
25 political reality. We believe that will happen,

1 and we believe that when those events occur, and  
2 when the political reality changes, the City will  
3 look to us and say, I guess you were right.  
4 You're right ISO, you are right Energy Commission,  
5 you're right Mirant, we do need this project in  
6 the City.

7 When that happens, we want to be  
8 prepared to move. We don't want to have to say,  
9 we're glad that you agree with us, and now we need  
10 to go into a twelve month or eighteen month  
11 licensing process to finish up the process.

12 We want to be ready to move with a  
13 certified project when that occurs. That is our  
14 thinking, that we need to move forward with this  
15 project, get it certified because we believe that  
16 the City will come to the realization, either on  
17 its own, or under pressure from the State or from  
18 some other entity that they need this project.  
19 When that happens, we want to be ready to move.

20 PRESIDING MEMBER PERNELL: All right.  
21 Mr. Ramo, do you have any comments?

22 MR. RAMO: Since the subject of site  
23 control was taken up in a previous motion, you  
24 know my views legally on that issue. I will  
25 simply say that clearly at some point, if Mirant

1 insists on going forward with this project, the  
2 Committee will have to determine whether it is in  
3 the business of licensing virtual reality  
4 projects.

5 You know my views on that, I don't think  
6 I have to go much further other than I completely  
7 agree with the City's presentation on those  
8 issues.

9 My views on the viability of this  
10 project has not changed since the time that we  
11 first made that motion. On the discovery issue  
12 and scheduling the timing, if we are talking about  
13 a continuance to a status conference some time in  
14 mid September, I don't have a problem with that if  
15 that is a status conference.

16 It seems to me a reasonable time for the  
17 Committee to check in with the parties to  
18 determine if we are ready to set hearings or to  
19 see if there's still problems with the Air  
20 District doing its final determination compliance.

21 What I am concerned with is the  
22 discovery. Air Quality and impacts to the Bay  
23 along with environmental justice are the most  
24 important issues for this case, and you can expect  
25 that we will be insisting that the Committee take

1 the same care in addressing those issues as it  
2 does for other communities where I've seen the  
3 Committee take that care and schedule hearings and  
4 provide sufficient opportunities for people to  
5 investigate the facts.

6 We are talking about a big change, which  
7 the Staff in its options analysis admitted was a  
8 conceptual analysis, and it was by no means a  
9 specific proposal. We are bringing outside  
10 consultants in on that issue. It is a complex  
11 issue, and going with cooling towers and adding  
12 tons of particulate matter to this community, is a  
13 big issue.

14 We want to be sure that the rights that  
15 we have aren't constrained anymore than what you  
16 have done for other communities where cooling has  
17 been an important issue --

18 PRESIDING MEMBER PERNELL: Is that a  
19 question, Mr. Ramo? I mean, is it your opinion  
20 that -- let me rephrase it. Is it your opinion  
21 that the Committee won't take as much time with  
22 your community as we have with other communities?

23 MR. RAMO: When I hear statements about  
24 abbreviating discovery schedules, it raises a  
25 concern. Do I think this Committee would actually



1 do that, I would be very surprised if you did  
2 that, and I'm just indicating that because my  
3 concern was raised about that.

4 PRESIDING MEMBER PERNELL: Right. I  
5 think what Mr. Valkosky was giving me is my  
6 options under the Warren Alquist Act and nothing  
7 else. I'm not suggesting anything.

8 MR. RAMO: Okay.

9 PRESIDING MEMBER PERNELL: I don't want  
10 the perception that for some reason that we are  
11 going to treat your community any different than  
12 we treat any other community as it relates to  
13 these issues.

14 MR. RAMO: Okay. I'll move on. In  
15 terms of the willingness to tieing up loose ends,  
16 we are dealing with complex issues. There are  
17 numerous government agencies, and there are  
18 numerous parties at work here. I do believe in  
19 three months, we may know where we are and  
20 Committee will be able at the status conference in  
21 September to make some judgements.

22 There are clearly interests in this  
23 company for understandable reasons. They want to  
24 keep fighting and pushing this project. They have  
25 a large ownership interest in that site. They

1 have invested a lot of money in this project, and  
2 for that reason it is understandable, and I think  
3 we are hearing the advocates today in the company  
4 indicating they are reluctant to walk away from  
5 something like that.

6 It occurs to me that if the Committee  
7 wants to help facilitate resolving all these loose  
8 ends and really getting to some crystal clear  
9 clarity on this, that some other aspects of the  
10 big picture involved here have to come into play.

11 This company is currently being sued by  
12 not only the City of San Francisco, but the State  
13 of California. From what I can tell, resolving  
14 that situation is low on the State of California's  
15 interest, at least those --

16 PRESIDING MEMBER PERNELL: Mr. Ramo, I'm  
17 trying to hold down the personal comments. I  
18 don't need -- just don't give me too much  
19 information. What the Committee is concerned  
20 about is the --

21 MR. RAMO: Let me reduce it to the  
22 essential --

23 PRESIDING MEMBER PERNELL: It would be  
24 helpful if the Staff in assisting the parties to  
25 address the loose ends, would assure that whatever

1 other state interests may be helpful to  
2 facilitating that end, would be aware of the  
3 importance of the period of time and focusing on  
4 this effort. That is all I would say on that.

5 On our part, as I indicated earlier, we  
6 are meeting with Mirant, we've had -- well, we've  
7 had infrequent meetings in the past with Mirant  
8 which were constructive. I think there has been a  
9 renewed focus on the part of Mirant, on the part  
10 of our group, and other community organizations,  
11 There has been more community organizations  
12 represented at these meetings than ever, and they  
13 have been civil meetings and constructive and good  
14 faith meetings.

15 I think there is a serious effort on our  
16 part. The company saw it, intervenors saw it,  
17 community organizations saw it, to get to the  
18 heart of a lot of these matters. Whether it is  
19 Unit 3 in specific, which I think we ought to be  
20 able to resolve in three months or some of the  
21 larger big picture issues, I think there is an  
22 effort to do that. That's my comments.

23 PRESIDING MEMBER PERNELL: Your  
24 willingness to continue to work with Mirant and  
25 the City is -- that commitment is there, it sounds

1       like you are already doing it. It probably need  
2       not be said, but we are trying to get -- I want to  
3       be fair, and that is everybody the same question.

4               Is that a yes?

5               MR. RAMO: Yes, we will continue our  
6       efforts to.

7               PRESIDING MEMBER PERNELL: All right.  
8       Thank you, Mr. Ramo. Okay -- go ahead.

9               MR. ROSTOV: It's easy going last  
10       because I want to agree with Ms. Minor and Mr.  
11       Ramo, but I just also would like to focus on the  
12       public process aspects of this.

13              Essentially, Mirant is proposing in mid  
14       July to do an amendment to the AFC, and then there  
15       needs to be a discovery period where we need an  
16       opportunity to fully evaluate it, do data  
17       requests, and then Mirant needs an opportunity to  
18       respond to those data requests.

19              My understanding of the CEC process is  
20       usually there is a data request hearing at the end  
21       of that. After that, my understanding is the CEC  
22       would come out with some draft, the Staff would  
23       come out with some draft analysis of what is going  
24       on, then there should be a public comment period,  
25       and then after that there should be a final staff

1       assessment.

2               The idea of being able to do this in 45  
3       days or 60 days for mid July, this does not make  
4       any sense to me if you really want to include the  
5       public in this process.

6               PRESIDING MEMBER PERNELL: I don't think  
7       we are going all the way back to the beginning to  
8       have a final staff assessment, etc. We are going  
9       to do analysis on the proposed change and give the  
10      public adequate time to comment on it.

11              What we are looking for, and let me  
12      maybe refresh everybody's memory, as well as my  
13      own, what we are looking for here is a date to  
14      come back for a status conference.

15              MR. ROSTOV: I believe Mr. Ramo proposed  
16      mid September, and what I am saying is mid  
17      September might be okay, but we won't be done with  
18      discovery, I don't believe, discovery and analysis  
19      of this. If you really want to have true public  
20      participation in this process.

21              PRESIDING MEMBER PERNELL: What is your  
22      timeline?

23              MR. ROSTOV: I would say at least 120  
24      days from whenever they propose their amendment.

25              PRESIDING MEMBER PERNELL: The final

1 question is, and again, I think I know the answer  
2 to this, but just for the record, the willingness  
3 to work with all parties. You two guys, you and  
4 Mr. Ramo, are the community representatives,  
5 certainly the City represents the community as  
6 well, but from a grass roots perspective, it is  
7 important that at least for the Committee that we  
8 get -- that you have the access to the process and  
9 not just our process but the other negotiations  
10 that is going on between Mirant ant the City.

11 My question is are you willing to try  
12 and tie up the loose ends and participate in that  
13 process?

14 MR. ROSTOV: Right. We have been  
15 participating in that process and we are willing  
16 to continue to participate in it. There are two  
17 other points about the loose ends, I guess. One  
18 is -- one, we never knew about a draft biological  
19 opinion, it sounds like --

20 PRESIDING MEMBER PERNELL: Neither did  
21 we, so don't feel bad about that.

22 MR. ROSTOV: Even though it is not  
23 public, Mirant seems to know about it, so that is  
24 kind of interesting in and of itself, but there is  
25 going to be a parallel public process going on

1 with the draft biological opinion and final  
2 biological opinion. That should take some time.

3 In addition, if they change the cooling  
4 tower option, there should be some draft procedure  
5 again in the Air District, so that DOC might need  
6 to be amended. If that occurs, there also may be  
7 or should be a public process on that.

8 Those things need to be taken into  
9 account if we are really considering public  
10 process and community involvement.

11 PRESIDING MEMBER PERNELL: I think it is  
12 the Committee's vision that a lot of those issues  
13 be on a parallel track. Surely, we are not going  
14 to come with everybody in agreement and shaking  
15 hands, but we want to have some sense of a finite  
16 time to come back that we can have as much as  
17 possible done. We realize that there is a lot to  
18 be done.

19 We're -- I guess this process that I am  
20 going through now is one for the Committee to get  
21 a sense from all parties as to how much time it  
22 would take to pull as much of this together as  
23 possible, recognizing that we all have other  
24 people or bodies of folks that we have to go back  
25 and report to and get some agreement on.

1           What we are trying to do here, again, is  
2   to get a finite time that we can get most of these  
3   issues settled or have a better understanding of  
4   the direction of which we are going. Ms. Minor.

5           MS. MINOR: It would be helpful to hear  
6   from Mirant when they would expect to file an  
7   amendment to the FDOC related to the hybrid  
8   cooling.

9           MR. CARROLL: What we would anticipate  
10   doing is filing any necessary amendments with the  
11   Air District at approximately the same time that  
12   we filed the amendment with the Energy Commission.

13          PRESIDING MEMBER PERNELL: Which is?

14          MR. CARROLL: Roughly 45 days from now.

15          PRESIDING MEMBER PERNELL: 45 days.

16          DR. REEDE: Excuse me, Commissioner  
17   Pernell, Air Districts don't license cooling  
18   towers, we license the cooling towers. They don't  
19   have a permitting process for cooling towers, we  
20   do the permitting of the cooling towers. We make  
21   the SEQA mitigation requirements, air districts  
22   don't.

23                 That is why we've had to take the honors  
24   on us to include the cooling tower emissions in  
25   our air quality analysis and require the Applicant



1 to have additional credits under SEQA.

2 PRESIDING MEMBER PERNELL: All right,  
3 Mr. Carroll.

4 MR. CARROLL: It is true that the  
5 cooling towers are licensed through the Energy  
6 Commission process, but the Energy Commission  
7 process also requires that the air district issue  
8 a FDOC, and because the cooling towers are going  
9 to result in some additional emissions that were  
10 not considered in the original FDOC, I think the  
11 Air District is going to want to see a request, an  
12 amendment submitted to them as well, so they can,  
13 in turn, make any necessary changes to the FDOC  
14 that they provided to the Energy Commission so  
15 that the Energy Commission can, as Mr. Reede  
16 suggested, then license the cooling towers.

17 PRESIDING MEMBER PERNELL: Okay. Is --

18 MR. CARROLL: I'd just like to add, you  
19 know, one more thing on this whole notion of  
20 public participation. The issues associated with  
21 the cooling system, including the proposed  
22 alternative, have been the subject of a great deal  
23 of public participation. It was the public  
24 participation and the agency participation that  
25 has led us to this point of proposing an

1 alternative for the project.

2 You know, this is not a change that  
3 Mirant has of its own volition, simply decided to  
4 make in midstream and we are springing it on the  
5 public for the first time. This change is a  
6 result of the lengthy public process that has  
7 already occurred, and I think we need to recognize  
8 that.

9 That is not to suggest that there isn't  
10 a need for some discovery period and that there  
11 shouldn't be an opportunity for the public to  
12 weigh in, but the notion that it's going to take  
13 six months of public workshops and that sort of  
14 thing, I think, is really misplaced.

15 When the public reacts to a project and  
16 asks the Applicant to make changes, and the  
17 Applicant makes those changes, you are not going  
18 back to square one then to get additional public  
19 participation in the process.

20 PRESIDING MEMBER PERNELL: All right.  
21 I'm going to bring us back to the dias, is there  
22 anyone else that has anything to say? Mr.  
23 Valkosky?

24 HEARING OFFICER VALKOSKY: I have one  
25 question. Mr. Westerfield or Dr. Reede, is it

1 Staff's intention to hold one or more public  
2 workshops on the amendment after the amendment is  
3 filed?

4 DR. REEDE: Yes, it would be our --

5 MR. WESTERFIELD: Can I just comment on  
6 that, please. I think we would like to await the  
7 amendment and take a look at what is there before  
8 making that decision. It is hard for us to say at  
9 this point whether we would need to do that.

10 HEARING OFFICER VALKOSKY: I understand  
11 not having the amendment in hand creates some  
12 difficulty. What I am looking for is, should --  
13 for example, CBE or --

14 DR. REEDE: To answer your question,  
15 yes, we would have public input during the -- one,  
16 during the data -- one during the -- at minimum,  
17 one during the discovery process, and then one  
18 immediately after we issue the addendum to the FSA  
19 related to the amendment.

20 HEARING OFFICER VALKOSKY: Okay. There  
21 would be --

22 DR. REEDE: At minimum, two.

23 HEARING OFFICER VALKOSKY: Thank you.

24 PRESIDING MEMBER PERELL: That's it.

25 MR. WESTERFIELD: Actually, I do have an

1 additional question, if I may, that follows along  
2 from Commissioner Pernell's question to various  
3 parties. I was a little confused about the City's  
4 answer in relation to Commissioner Pernell's  
5 question about willingness.

6 The City has, I think, said that the  
7 hearing should not go forward until a deal is made  
8 with Mirant on supplying the recycled water, and I  
9 suppose my question is, is the City ready,  
10 willing, and able to enter into negotiations with  
11 Mirant to sell them the necessary water?

12 MS. MINOR: I thought I answered that  
13 question.

14 MR. WESTERFIELD: I'm sorry, I was  
15 confused about your answer.

16 MS. MINOR: You were?

17 PRESIDING MEMBER PERNELL: You can't get  
18 off that easy.

19 MS. MINOR: I keep thinking I am very  
20 clear. I'm not the policy maker, I'm the  
21 attorney. I can make no commitments on the part  
22 of the City with respect to policy issues. At a  
23 technical level, and I have been a part of the  
24 support for the technical team, we have been  
25 talking in a very collaborative way with Mirant

1 with respect to the hybrid cooling.

2 Mirant has not, as of yet, submitted any  
3 proposal that would include business terms that  
4 would trigger the policy makers getting involved  
5 in this question, and beginning to give me, as  
6 their attorney, any sense about whether from a  
7 public policy standpoint there's any interest in  
8 entering into such an agreement with Mirant.

9 I don't have the answer to that  
10 question. I think we've got to begin this process  
11 of taking what looks like the beginnings of a  
12 business agreement to both the legislative and  
13 executive branches to see if there is any kind of  
14 likelihood that the City is interested in entering  
15 into such an agreement.

16 If the City is interested, then we have  
17 a public process that includes both the executive  
18 branch taking it to the legislative branch, the  
19 legislative branch conducting full public  
20 hearings, and then either a resolution or an  
21 ordinance that ultimately has to be approved by  
22 the mayor as well.

23 MR. WESTERFIELD: No wonder I was  
24 confused. Thank you.

25 DR. REEDE: It raises the question --

1 MS. MINOR: The City's process is really  
2 no different than the process of any other public  
3 agency that approves agreements.

4 MR. WESTERFIELD: All I asked was  
5 whether the City was willing to enter into  
6 negotiations, and I'm still not sure from your  
7 answer whether it is willing to enter into  
8 negotiations.

9 MS MINOR: You are asking that question  
10 of the City's attorney, I'm not the policy maker,  
11 I'm the attorney, Bill.

12 PRESIDING MEMBER PERNELL: All right.

13 DR. REEDE: I have one more question,  
14 Commissioner.

15 PRESIDING MEMBER PERNELL: You can't  
16 answer that because you are not in a position to  
17 do so, so Dr. Reede, you have something else to  
18 say?

19 DR. REEDE: He is asking me not to ask.

20 PRESIDING MEMBER PERNELL: Okay. I'll  
21 take that. I'm going to turn it over to Mr.  
22 Valkosky.

23 HEARING OFFICER VALKOSKY: Last question  
24 on this. Mr. Carroll, I understood from an  
25 earlier statement that Applicant would be very

1       shortly opening negotiations and the terms of the  
2       business agreement.  Is that a correct  
3       understanding?

4               MR. CARROLL:  We will attempt to do  
5       that, yes.

6               HEARING OFFICER VALKOSKY:  Yes.  Okay.

7               PRESIDING MEMBER PERNELL:  All right.  
8       Is there anything else to come before the -- any  
9       public comment on anything that we have discussed  
10      so far today, at least.

11              (No response.)

12              PRESIDING MEMBER PERNELL:  Is there any  
13      other items or business to come before the  
14      Committee?

15              (No response.)

16              PRESIDING MEMBER PERNELL:  Any other  
17      business to come before the Committee?  Seeing  
18      none, this Committee is adjourned.  Thank you all.  
19      We will see you sometime between 45 and 360 days,  
20      I guess.

21              (Laughter.)

22              (Whereupon, at 12:22 p.m., the hearing  
23      was adjourned.)

24                              --oOo--

## CERTIFICATE OF REPORTER

I, DUNCAN FANKBONER, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th date of June, 2003.

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